

No. 10705

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

✓
2374

—
DIESEL SCREW "BETSY ROSS", PETER CEKALOVICH, DOMINIC MRATINICH and FRANK MULJAT,

Appellants,

vs.

STEVE RULJANOVICH,

Appellee.

—
APOSTLES ON APPEAL

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

—

FILED

JUN 21 1961

PAUL P. O'BRIEN.
CLERK

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NAMES AND ADDRESSES OF PROCTORS:

For Appellants:

HENRY E. KAPPLER

639 S. Spring St.,
Los Angeles 14, Calif.

For Appellee:

DAVID A. FALL

388 S. 7th St.,
San Pedro, Calif. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

United States of America, ss.

To Steve Ruljanovich, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 3rd day of March, A. D. 1944, pursuant to an order allowing appeal filed on Jan. 21, 1944, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 2693, O'C, Central Division, wherein Diesel Screw "Betsy Ross," Peter Cekalovich, Dominic Mratinich and Frank Muljat are appellants and you are appellee to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. F. T. O'Connor, United States District Judge for the Southern District of California, this 21st day of January, A. D. 1944, and of the Independence of the United States, the one hundred and sixty seventh.

J. F. T. O'CONNOR,
U. S. District Judge for the Southern District
of California.

Service of a copy of the foregoing Citation is acknowledged this 25th day of January, 1944, and copies of Notice of Appeal, Petition for Appeal, Order allowing Appeal and Assignments of Error.

DAVID A. FALL,
Proctor for Appellee.

[Endorsed]: Filed Jan. 25, 1944. [2]

In the United States District Court, Southern District
of California, Central Division

No. 2693 O'C
IN ADMIRALTY

STEVE RULJANOVICH,

Libelant,

vs.

DIESEL SCREW "BETSY ROSS," her *tackel*, ap-
parel, engines, and furniture; and PETER CEKA-
LOVICH, MASTER of said vessel, and PETER
CEKALOVICH, DOMINIC MRATINICH AND
FRANK MULJAT, her owners,

Respondents.

SECOND AMENDED LIBEL IN REM AND
IN PERSONAM.

To the Honorable Judges of the District Court of the
United States, Southern District of California,
Central Division,

IN ADMIRALTY.

The Second Amended Libel of Steve Ruljanovich, late
a fisherman seaman on board the Diesel Screw "Betsy
Ross," whereof Peter Cekalovich now is and has been
at all times herein mentioned, Master, against the said
ship, her *tackel*, apparel, engines, furniture, etc., and
Peter Cekalovich, Master of said vessel, and Peter Ceka-
lovich, Dominic Mratinich and Frank Muljat, her own-
ers, in a cause of contract, damage, wages, maintenance
and cure, civil and maritime, alleges as follows:

FIRST: That on or about the 3rd day of May,
1942, the said Diesel Screw "Betsy Ross", then lying
in the Port of Los Angeles, destined for an eleven

(11) months' Tuna and Sardine Fishing seasons, the then Master, Peter Cekalovich, by himself, hired this libelant as a fisherman seaman for the said seasons on the one-seventeenth lay or share of what should be taken, as wages, [3] and this libelant then accepted and entered into his duties as a member of the crew of the said "Betsy Ross."

SECOND: That on or about the 3rd day of May, 1942, this libelant entered into the duties as a member of the crew of the said ship.

THIRD: That on the 4th day of May, 1942, while this libelant was engaged in the service of said ship, and while doing his duty and obeying the commands of the Master of the "Betsy Ross", libelant was struck on the head by a heavy timber while at a warehouse, located at Terminal Island, at the Port of Los Angeles, for the purpose of bringing the ship's net from the said warehouse to the "Betsy Ross"; that by reason of being struck upon the head, as aforesaid, libelant sustained severe cerebral concussion, scalp laceration, contusions about his head and a possible skull fracture. That in addition thereto, libelant sustained damage to a denture in his mouth.

FOURTH: That as the result of said injuries, as aforesaid, libelant was confined to a hospital for a period of one week; and ever since the 4th day of May, 1942, libelant has been totally disabled as the result thereof, and is informed and believes, and therefore alleges that he will be disabled for a long and indeterminate period of time.

FIFTH: That as a result of the injuries as aforesaid, libelant has been under the care of duly licensed

physicians and surgeons, and that libelant is informed and believes, and therefore alleges that he will necessarily be under the care of duly licensed physicians and surgeons for an indeterminate period of time as the result of the aforesaid injuries. That libelant is uninformed as to the reasonable value of the medical services rendered to him to the present time, for which he has incurred liability in the treatment of the aforesaid injuries, and for which will be necessary in the future.

[4]

SIXTH: That by reason of the injuries as aforesaid, libelant claims to be entitled to demand and have the said ship pay his reasonable expenses already incurred and hereafter to be incurred in and about his cure, and his reasonable support since his said injury and until he has reached the maximum degree of recovery, or until he is able to return to his work, which said support is of the reasonable value of \$3.00 per day. That the reasonable amount accrued for such support to this date is One Thousand Ninety-Eight (\$1,098.00) Dollars.

SEVENTH: That the said Diesel Screw "Betsy Ross" is an American vessel and now is and will be during the currency of process herein, within the District of Southern California, and within the jurisdiction of this Honorable Court.

EIGHTH: That libelant is a seaman, within the designation of persons permitted to sue herein without furnishing Bond for or prepayment of or making deposit to secure fees and costs for the purpose of entering in and prosecuting suits conformable to the provisions of Title 28, Sec. 837, U. S. C. A.

NINTH: That all and singular the premises are true, and within the Admiralty and maritime jurisdiction of this Honorable Court. In verification whereof, if denied, the libelant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

FOR A SECOND, SEPARATE AND DISTINCT
CAUSE OF ACTION AND LIBEL IN REM
AND IN PERSONAM, LIBELANT ALLEGES
AS FOLLOWS:

FIRST: Libelant refers to, incorporates herein and makes a part hereof, as if fully set forth herein, paragraphs First, Second, Third, Fourth, Seventh, Eighth and Ninth of the First Cause of Action in this Second Amended Libel.

SECOND: That while this libelant has been confined and unable to work, as the result of the injuries as aforesaid, the said "Betsy Ross" engaged in fishing during the proposed Tuna and [5] Sardine seasons for which libelant was employed, and during the said seasons, the vessel took and caught a great quantity of Tuna and Sardines, which libelant is informed and believes and alleges, that his one-seventeenth lay or share of said catch being worth the sum of Six Thousand (\$6,000.00) Dollars and upwards, which the Master and owners of the said vessel have hitherto refused and still refuse to pay, to the great damage of the libelant. That the full amount of said lay or share was due and payable not later than the 15th day of March, 1943; and libelant is entitled to interest thereon at 7% per annum from its due date until paid.

FOR A THIRD, SEPARATE AND DISTINCT CAUSE OF ACTION AND LIBEL IN PERSONAM, LIBELANT ALLEGES AS FOLLOWS:

FIRST: Libelant refers to, incorporates herein and makes a part hereof, as if fully set forth herein, paragraphs First, Second, Third, Fourth, Fifth, Seventh, Eighth and Ninth of the First cause of action in this Second Amended Libel.

SECOND: That at all times herein mentioned Peter Cekalovich, Dominic Mratinich and Frank Muljat were and are the owners of the Diesel Screw "Betsy Ross".

THIRD: That the said accident, as set forth in paragraph Third of libelant's first cause of action, and made a part hereof by reference, was *cause*, without any contributing fault or neglect on the part of libelant, and as a proximate result of the combined negligence of the Crescent Warehouse Company, and the negligence of Frank Muljat, part owner and member of the crew of the Diesel Screw "Betsy Ross", and the negligence of the said vessel in the following, among other particulars, which will be pointed out on the trial of this action:

(1) By Frank Muljat negligently and carelessly pushing over a large timber approximately 16½ feet in length, which, without any warning to libelant, struck libelant upon the head; [6]

(2) By the negligent failure of Frank Muljat, part owner and member of the crew of the Diesel Screw "Betsy Ross", to give libelant warning of the falling timber;

(3) By the negligent pushing against or leaning against a timber, which was standing on end and leaning against the side of the aforesaid warehouse, by respondent Frank Muljat, causing said timber to fall upon the head of libelant herein.

(4) In that the vessel, its master and owners failed to provide libelant with a safe place to work.

FOURTH: That by reason of the premises herein and the accident as aforesaid, libelant sustained severe bodily injuries to his head and entire nervous system; that as a result thereof he has been totally disabled and incapacitated from work since the date of his injuries; and libelant is informed and believes and therefore alleges that he will be unable to return to his work as a seaman or any other employment for an indeterminate period of time.

FIFTH: That libelant is informed and believes, and therefore alleges that the injuries so sustained are permanent in their character.

SIXTH: That libelant is married and lives with and supports his wife; and up until the accident set forth herein, libelant earned approximately \$40.00 per week in cannery work.

SEVENTH: That by reason of the premises herein, libelant has been generally damaged in the sum of \$15,000.00.

WHEREFORE: Libelant prays that process in due form of law according to the course of this Honorable Court in cases of Admiralty and maritime jurisdiction, may issue against the said Diesel Screw "Betsy Ross",

her *tackel*, apparel, furniture; and that Peter Cekalovich, master of said vessel, and all persons having any right, title or interest in said vessel, her *tackel*, apparel or furniture, may be cited to appear and answer all [7] matters aforesaid, and that this Honorable Court may be pleased to decree the payment of wages, maintenance and cure, and damages aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same, and that libelant may have such other relief in the premises, as in law and justice he may be entitled to receive.

DAVID A. FALL,
David A. Fall
Proctor of Libelant,

388 W. 7th Street, San Pedro, California,
Phone Harbor 2811.

[Verified.]

[Endorsed]: Filed May 7, 1943. [8]

In the United States District Court, Southern District
of California, Central Division

IN ADMIRALTY

No. O'C 2693

STEVE RULJANOVICH,

Libellant,

vs.

DIESEL SCREW "BETSY ROSS", etc., et al.,

Respondents,

PETER CEKALOVICH, DOMINIC MRATINICH
and FRANK MULJAT,

Claimants.

CLAIM

To the Honorable Judges of the District Court of
the United States for the Southern District of Cali-
fornia:

The claim of Peter Cekalovich, Dominic Mratinich
and Frank Muljat to the Diesel Screw "Betsy Ross",
her tackle, apparel, engines and furniture, now in the
custody of the United States Marshal for the South-
ern District of California, at the suit of the libellant
above named, alleges:

That said Peter Cekalovich, Dominic Mratinich and
Frank Muljat are the true and bona fide owners of the
said Diesel Screw "Betsy Ross", her tackle, apparel,
engines and furniture and that no other persons are the
owners thereof and the said Peter Cekalovich, Dominic
Mratinich and Frank Muljat claim the same.

Wherefore, these claimants pray that this Honorable Court [9] will be pleased to decree a restitution of the said Diesel Screw "Betsy Ross", her tackle, apparel, engines and furniture to these claimants and otherwise right and justice to administer in the premises.

PETER CEKALOVICH

Peter Cekalovich

DOMINIC MRATINICH

Dominic Mratinich

FRANK MULJAT

Frank Muljat

HENRY E. KAPPLER

Henry E. Kappler

Proctor for Claimants.

[Verified.]

[Endorsed]: Filed Mar 25, 1943. [10]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the libellant and the Claimants above named, by and through their respective proctors, that the Diesel Screw "Betsy Ross", her tackle, apparel, engines and furniture may be released forthwith from the custody of the United States Marshal for the Southern District of California upon said Claimants giving an admiralty stipulation and bond in the sum of \$11,000.00, in the usual form, with an accredited surety company as surety thereon.

Dated: Los Angeles, California, this 25th day of March, 1943.

DAVID A. FALL

Proctor for Libellant

HENRY E. KAPPLER

Proctor for Claimants.

[Endorsed]: Filed Mar 25, 1943. [11]

[Title of District Court and Cause.]

ORDER

Whereas, a libel and amended libel have been filed by the above named libellant against the Diesel Screw "Betsy Ross", her tackle, apparel, engines and furniture, et al., for the reasons and causes in said libel and amended libel mentioned; and

Whereas, a bond stipulating payment of costs in the sum of \$250.00 has been executed by the Fireman's Fund Indemnity Company, a corporation, as surety; and

Whereas, said bond has been filed with the above entitled court; and

Whereas, a bond in the sum of \$11,000.00, has been executed by the Fireman's Fund Indemnity Company, a corporation, as surety, and Peter Cekalovich, Dominic Mratinich and Frank Muljat as principals; and [12]

Whereas, said bond has been filed with the above entitled court, and the said bond being conditioned that in the event of failure of the principals Peter Cekalovich, Dominic Mratinich and Frank Muljat to abide by all orders of this Court made or to be made herein, then said surety will pay the amount ordered by the final decree, not exceeding the penal sum of \$11,000.00; and

Whereas, said bonds have been and each of them is hereby approved by the court;

It Is Hereby Ordered that the Diesel Screw "Betsy Ross" her tackle, apparel, engines and furniture, be forthwith released to the claimants Peter Cekalovich, Dominic Mratinich and Frank Muljat.

Done in open court this 25 day of March, 1943.

J. F. T. O'CONNOR
United States District Judge.

[Endorsed]: Filed Mar 25, 1943. [13]

In the United States District Court, Southern District
of California, Central Division

IN ADMIRALTY

No. O'C 2693

STEVE RULJANOVICH,

Libellant,

vs.

DIESEL SCREW "BETSY ROSS", her tackel, ap-
parel, engines and furniture, et al.,

Respondents.

EXCEPTIONS TO SECOND AMENDED LIBEL

Come now the respondents Peter Cekalovich, Dominic
Mratinich and Frank Muljat and except to the second
amended libel, as follows:

I.

The above entitled Court has no jurisdiction as to the
first cause of action set forth in said second amended
libel.

II.

The above entitled Court has no jurisdiction as to
the second cause of action set forth in said second
amended libel.

III.

The above entitled Court has no jurisdiction as to the
third cause of action in that it appears that the injuries,
if any, sustained by the libellant occurred in a ware-
house, not alleged to have been owned or operated by
the respondents or any them, and [14] which said
warehouse was and is located on Terminal Island at the
Port of Los Angeles, and was not in anywise connected
with the fishing vessel "Betsy Ross".

IV.

Respondents except to the distinctness, fullness and sufficiency of the Third Article of the third cause of action upon the ground that it cannot be ascertained therefrom how or in what respect the respondent Frank Muljat was negligent or careless in pushing over a large timber.

V.

Respondents except to the distinctness, fullness and sufficiency of said Third Article in said third cause of action upon the ground that it cannot be ascertained therefrom whether the respondent Frank Muljat is alleged to have pushed against said timber or whether he is alleged to have leaned against said timber.

VI.

Respondents except to the distinctness, fullness and sufficiency of said Third Article in said third cause of action upon the ground that it cannot be ascertained therefrom how or in what respect the respondents failed to provide the libellant with a safe place in which to work and said uncertainty arises by reason of the fact that there is no allegation that the injuries occurred aboard the fishing vessel "Betsy Ross".

Wherefore, respondents pray that the exceptions, or such thereof as the Court decides are properly taken, be sustained and that the libellant be compelled to amend his libel, or in lieu thereof and in the event of a refusal or failure to amend, that the said second amended libel be dismissed.

HENRY E. KAPPLER

Henry E. Kappler

Proctor for Respondents.

639 South Spring St.,

Los Angeles, California. [15]

MEMORANDUM OF POINTS AND
AUTHORITIES

I.

The rules of pleading in admiralty causes provide that the cause of action should be plainly and explicitly set forth.

Benedict, 6th Edition, Second Volume, pg. 67.

All that is set forth in connection with the articles contained in the third cause of action is that the respondent Muljat negligently pushed or leaned against a timber. Respondents are entitled to a more detailed and complete statement with reference to the alleged conduct of the respondent Muljat. Particularly is this true where it is alleged as a separate ground of complaint that the respondents failed to provide the libellant with a safe place in which to work.

II.

The above entitled Court has no jurisdiction of the causes of action set forth in the second amended libel.

See

Alaska Packers Asso. v. Industrial Accident
Commission, 72 L. Ed. 400.

It appears from the face of the second amended libel that the libellant was injured while in a warehouse located upon Terminal Island. He was injured while doing something which could have been done by a person other than a seaman or fisherman and under the

aforementioned authority his sole remedy would be by a proceeding before the Industrial Accident Commission of the State of California.

In the case of *Alaska Packers Asso. v. I. A. C.*, supra, it was held that a fisherman-seaman who was injured on land was entitled to the benefits of the compensation laws of the State of California. The Labor Code provides that where liability for the payment of compensation exists, the remedy provided by the Labor Code shall be the exclusive remedy against the employer. [16]

The second amended libel sets forth that the respondents were at all times the employers of the libellant.

It is respectfully submitted that the second amended libel should be dismissed.

HENRY E. KAPPLER,
Henry E. Kappler
Proctor for Respondents.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun 4, 1943. [17]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 14th day of June in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable J. F. T. O'Connor, District Judge.

Steve Ruljanovich,

Libelant,

vs.

No. 2693-O'C Adm.

Diesel Screw "Betsy Ross", etc.,

Respondent

This cause coming on for hearing on exceptions of respondents to the second amended libel, pursuant to notice filed June 4, 1943; Henry E. Kappler, Esq., appearing as counsel for the respondents: Attorney Kappler makes a statement; the Court makes a statement, and holds it has jurisdiction and that respondent is entitled to a more definite statement as to what the alleged negligence consists of, and orders this cause continued for the Term for setting for trial.

[Title of District Court and Cause.]

THIRD AMENDED LIBEL IN REM AND IN
PERSONAM

To the Honorable Judges of the District Court of the
United States, Southern District of California,
Central Division,

IN ADMIRALTY.

The Third Amended Libel of Steve Ruljanovich, late a fisherman on board the Diesel Screw "Betsy Ross", whereof Peter Cekalovich, now is and has been at all times herein mentioned, Master, against the said ship, her *tackel*, apparel, engines, furniture, etc., and Peter Cekalovich, Master of said vessel, and Peter Cekalovich, Dominic Mratinich and Frank Muljat, her owners, in a cause of contract, damage, wages, maintenance and cure, civil and maritime, alleges as follows:

FIRST: That on or about the 3rd day of May, 1942, the [19] said Diesel Screw "Betsy Ross", then lying in the Port of Los Angeles, destined for an Eleven (11) months' Tuna and Sardine Fishing seasons, the then Master, Peter Cekalovich, by himself, hired this libellant as a fisherman seaman for the said seasons on the One-seventeenth lay or share of what should be taken, as wages, and this libellant then accepted and entered into his duties as a member of the crew of the said "Betsy Ross".

SECOND: That on or about the 3rd day of May, 1942, this libellant entered into the duties as a member of the crew of the said ship.

THIRD: That on the 4th day of May, 1942, while this libellant was engaged in the service of said ship,

and while doing his duty and obeying the commands of the Master of the "Betsy Ross", libellant was struck on the head by a heavy timber, while at a warehouse located at Terminal Island, at the Port of Los Angeles, for the purpose of bringing the ship's net from the said warehouse to the "Betsy Ross"; that by reason of being struck upon the head, as aforesaid, libellant sustained severe cerebral concussion, scalp laceration, contusions about his head and a possible skull fracture. That in addition thereto, libellant sustained damage to a denture in his mouth.

FOURTH: That as the result of said injuries, as aforesaid, libellant was confined to a hospital for a period of one week, and ever since the 4th day of May, 1942, libellant has been totally disabled as the result thereof, and is informed and believes, and therefore alleges that he will be disabled for a long and indeterminate period of time.

FIFTH: That as a result of the injuries as aforesaid, libellant has been under the care of duly licensed physicians and surgeons, and that libellant is informed and believes, and therefore alleges that he will necessarily be under the care of duly licensed physicians and surgeons for an indeterminate period of [20] time as the result of the aforesaid injuries. That libellant is uninformed as to the reasonable value of the medical services rendered to him to the present time, for which he has incurred liability in the treatment of the aforesaid injuries, and for which will be necessary in the future.

SIXTH: That by reason of the injuries as aforesaid libellant claims to be entitled to demand and have

the said ship pay his reasonable expenses already incurred and hereafter to be incurred in and about his cure, and his reasonable support since his said injury and until he has reached the maximum degree of recovery, or until he is able to return to his work, which said support is of the reasonable value of \$3.00 per day. That the reasonable amount accrued for such support to this date is One Thousand Ninety-Eight (\$1,098.00) Dollars.

SEVENTH: That the said Diesel Screw "Betsy Ross" is an American vessel and now is and will be during the currency of process herein, within the District of Southern California, and within the jurisdiction of this Honorable Court.

EIGHTH: That libellant is a seaman, within the designation of persons permitted to sue herein without furnishing Bond for or prepayment of or making deposit to secure fees and costs for the purpose of entering in and prosecuting suits conformable to the provisions of Title 28, Sec. 837, U. S. C. A.

NINTH: That all and singular the premises are true, and within the Admiralty and maritime jurisdiction of this Honorable Court. In verification whereof, if denied, the libellant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

FOR A SECOND, SEPARATE AND DISTINCT
CAUSE OF ACTION AND LIBEL IN REM
AND IN PERSONAM, LIBELLANT AL-
LEGES AS FOLLOWS:

FIRST: Libellant refers to, incorporates herein and makes a part hereof, as if fully set forth herein, para-

graphs [21] First, Second, Third, Fourth, Seventh, Eighth and Ninth of the First Cause of Action in this Third Amended Libel.

SECOND: That while this libellant has been confined and unable to work, as the result of the injuries as aforesaid, the said "Betsy Ross" engaged in fishing during the proposed Tuna and Sardines seasons for which libellant was employed, and during the said seasons, the vessel took and caught a great quantity of Tuna and Sardines, which libellant is informed and believes and alleges, that his One-seventeenth lay or share of said catch being worth the sum of Six Thousand (\$6,000.00) Dollars and upwards, which the Master and owners of the said vessel have hitherto refused and still refuse to pay, to the great damage of the libellant. That the full amount of said lay or share was due and payable not later than the 15th day of March, 1943; and libellant is entitled to interest thereon at 7% per annum from its due date until paid.

FOR A THIRD, SEPARATE AND DISTINCT CAUSE OF ACTION AND LIBEL IN PERSONAM, LIBELLANT ALLEGES AS FOLLOWS:

FIRST: Libellant refers to, incorporates herein, and makes a part hereof, as if fully set forth herein, paragraphs First, Second, Third, Fourth, Fifth, Seventh, Eighth and Ninth of the First Cause of action in this Third Amended Libel.

SECOND: That at all times herein mentioned Peter Cekalovich, Dominic Mratinich and Frank Muljat were and are the owners of the Diesel Screw "Betsy Ross".

THIRD: That the said accident, as set forth in paragraph Third of libellant's First Cause of Action, and made a part hereof by reference, was caused, without any contributing fault or neglect on the part of libellant, and as a proximate result of the combined negligence of the Crescent Warehouse Company, and the negligence of Frank Muljat, part owner and member of the crew of the Diesel Screw "Betsy Ross", and the negligence of the said vessel in the [22] following, among other particulars, which will be pointed out on the trial of this action:

(1) By Frank Muljat negligently and carelessly pushing over a 4 by 4 inch timber approximately 16½ feet in length, which was standing on one of *it's* ends, unfastened and leaning against the interior wall of the Warehouse of the Crescent Warehouse Company, where libellant had been instructed to assist in moving a net to the "Betsy Ross", and as the direct and proximate cause of defendant Frank Muljat negligently and carelessly pushing over the aforesaid timber, without any warning, striking libellant upon the head;

(2) By the negligent failure of Frank Muljat, part owner and member of the crew of the Diesel Screw "Betsy Ross", to give libellant warning of the falling timber;

(3) By the negligent pushing against or leaning against an unfastened timber, which was standing on end and leaning against the side of the aforesaid warehouse, by respondent Frank Muljat, causing said timber to fall upon the head of libellant herein, while libellant was engaged in duties in the service of the "Betsy Ross".

(4) In that the vessel, its Master and owners failed to provide libellant with a safe place to work.

FOURTH: That by reason of the premises herein and the accident as aforesaid, libellant sustained severe bodily injuries to his head and entire nervous system; that as a result thereof he has been totally disabled and incapacitated from work since the date of his injuries; and libellant is informed and believes and therefore alleges that he will be unable to return to his work as a seaman or any other employment for an indeterminate period of time.

FIFTH: That libellant is informed and believes, and therefore alleges that the injuries so sustained are permanent in their character.

SIXTH: That libellant is married and lives with and [23] supports his wife; and up until the accident set forth herein, libellant earned approximately Forty (\$40.00) Dollars per week in cannery work.

SEVENTH: That by reason of the premises herein, libellant has been generally damaged in the sum of Fifteen Thousand (\$15,000.00) Dollars.

WHEREFORE: Libellant prays that process in due form of law according to the course of this Honorable Court in cases of Admiralty and Maritime jurisdiction, may issue against the said Diesel Screw "Betsy Ross", her *tackel*, apparel, furniture; and that Peter Cekalovich, Master of said vessel, and all persons having any right, title or interest in said vessel, her *tackel*, apparel or furniture, may be cited to appear and answer all matters aforesaid, and that this Honorable Court may be pleased to decree the payment of wages, maintenance and cure, and damages aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same, and that libellant may have such other relief in the premises, as in law and justice he may be entitled to receive.

DAVID A. FALL

DAVID A. FALL

Proctor for Libellant

388 W. 7th Street

San Pedro, California

Phone: Harbor 2811 [24]

[Verified.]

[Endorsed]: Filed Jul 10. 1943. [25]

[Title of District Court and Cause.]

ANSWER TO THIRD AMENDED LIBEL IN
REM AND IN PERSONAM

Come now the respondents and answer the third amended libel on file herein as follows:

I.

Answering the allegations contained in the First Article in the first cause of action, respondents admit that on or about the 3rd day of May, 1942, the Diesel Screw "Betsy Ross", was lying in the Port of Los Angeles and respondents admit that on or about said date Peter Cekalovich hired the libellant as a seaman-fisherman on a 1/17th lay or share of whatever fish should be taken during the period in which the libellant was serving the vessel as a seaman-fisherman. Respondents admit that on or about the said 3rd day of May, 1942, the libellant entered into his duties as a member of the crew of the said "Betsy Ross". [26]

Respondents deny each and every other and remaining allegation in the First Article except as has been heretofore expressly admitted.

Further answering said First Article, respondents allege that libellant was hired as a seaman-fisherman on a contract which was terminable at the will of either party. Respondents deny that the "Betsy Ross" was destined for an eleven months' Tuna and Sardine fishing season and in that respect allege that the Tuna and Sardine fishing seasons covered a period of approximately nine months.

II.

Respondents deny each and every allegation contained in the Third Article in the first cause of action.

III.

Respondents have no information or belief upon the subject sufficient to enable them, or any of them, to answer the allegations contained in the Fourth Article in said first cause of action, and placing their denial upon said ground, deny said allegations and each thereof.

IV.

Respondents have no information or belief upon the subject sufficient to enable them, or any of them, to answer the allegations contained in the Fifth Article in said first cause of action, and placing their denial upon said ground, deny said allegations and each thereof.

V.

Respondents deny each and every allegation contained in the Sixth Article in said first cause of action and respondents deny that the reasonable amount accrued for support to the date of the filing of the third amended libel was or is the sum of \$1098 or any other sum whatsoever or at all. [27]

VI.

Respondents deny each and every allegation contained in the Eighth Article in said first cause of action.

VII.

Respondents deny each and every allegation contained in the Ninth Article in said first cause of action.

Respondents answer the Second, Separate and Distinct Cause of Action in said third amended libel, as follows:

I.

Answering the First Article in said second cause of action, respondents incorporate herein by reference thereto, their answer to the first cause of action and by such reference make the same a part hereof with the same force and effect as though said answer were set forth herein in full.

II.

Respondents deny each and every allegation contained in the Second Article in said second cause of action except that respondents admit they have refused and still refuse to pay to the libellant the sum of \$6,000 or any other sum, and in this respect respondents deny that there is now due or owing or unpaid to the libellant the sum of \$6,000 or any other sum whatsoever or at all. Respondents deny that said sum, or any other sum, was due or payable not later than the 15th day of March, 1943, or at any other time. Respondents deny that the libellant is entitled to a 1/17th lay or share, or any other percentage of the lay or share of the catch of the "Betsy Ross".

Respondents answer the Third, Separate and Distinct Cause of action in said third amended libel, as follows: [28]

I.

Answering the First Article in said third cause of action, respondents incorporate herein by reference

thereto their answer to the first cause of action and by such reference make the same a part hereof with the same force and effect as though said answer were set forth herein in full.

II.

Respondents deny each and every allegation contained in the Third Article and in each and every subdivision thereof.

III.

Respondents deny each and every allegation contained in the Fourth Article in said third cause of action.

IV.

Respondents have no information or belief upon the subject sufficient to enable them, or any of them, to answer the allegations contained in the Fifth Article in said third cause of action, and placing their denial upon said ground, deny said allegations and each thereof.

V.

Respondents have no information or belief upon the subject sufficient to enable them, or any of them, to answer the allegations contained in the Sixth Article in said third cause of action, and placing their denial upon said ground, deny said allegations and each thereof.

VI.

Answering the Seventh Article, respondents deny that libellant has been damaged in the sum of \$15,000 or in any other sum whatsoever or at all.

As and for a Separate and Special Defense to the allegations contained in the third cause of action, respondents allege that the libellant negligently and carelessly failed and neglected to perform work which he was doing in an ordinarily skillful manner and [29] negligently and carelessly failed to conduct himself in an ordinarily careful and prudent manner in and about the management of his person and that any injuries or damage sustained by the libellant were a proximate result of said carelessness and negligence on his part.

Wherefore, respondents pray that this Honorable Court dismiss the third amended libel and that these respondents have judgment against the libellant for their costs of suit, proctor's fees and for such other or further relief as may be proper.

HENRY E. KAPPLER

Henry E. Kappler

Proctor for Respondent. [30]

[Verified.]

(Affidavit of Service by Mail)

[Endorsed]: Filed Aug. 12, 1943. [31]

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 20th day of December in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable J. F. T. O'Connor, District Judge.

Steve Ruljanovich,

Libelant,

vs

No. 2693-O'C Adm.

"Betsy Ross", et al.,

Respondents.

This cause coming before the Court at the hour of 1:45 P.M. for further proceedings; David A. Fall, Esq., appearing as proctor for the Libelant; Henry E. Kappler, Esq., appearing for the Respondents and Claimants, there being no Court Reporter present:

Attorney Kappler moves the Court to set aside the stipulation and order heretofore entered into that judgment be entered in favor of the Libelant for \$6,000.00; and the said motion having been granted and Attorney Fall having asked permission to dismiss Libelant's third cause of action in the libel, and counsel for the respective parties having argued the value of maintenance and cure, it is by the Court ordered that the motion of the Libelant to dismiss the third cause of action be denied, and that judgment be entered against the Libelant on the third cause of action; and thereupon, the

Court allows Libelant the sum of \$5,050.46, which would have been his part of the "catch"; also doctor's bills and medicines of \$94.90 and approximately eleven months for maintenance and cure at \$2.50 per day, amounting to \$825.00, or in all the sum of \$5,970.36, with stay of execution allowed on judgment for 20 days, and counsel for the Libelant is instructed to prepare decree in favor of the Libelant for that amount.

37/210. [32]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF
LAW.

This cause having come on regularly to be heard on the pleadings and proofs, and having been argued and submitted by the advocates for the respective parties, the court finds the facts as follows:

I.

That it is true that on or about the 3rd day of May, 1942, the Diesel screw "Betsy Ross", then lying in the Port of Los Angeles, destined for a nine months Tuna and Sardine Fishing seasons, and the then Master, Peter Cekalovich, by himself, hired libelant Steve Ruljanovich as a fisherman seaman for the said seasons on the one-seventeenth lay or share of what should be taken, as wages, and this libelant Steve Ruljanovich then accepted and entered into his duties as a member of the crew of the said "Betsy Ross".

II.

That it is true that on the 4th day of May, 1942, this libelant entered into the duties as a member of the crew of said ship. [33]

III.

That it is true that on the 4th day of May, 1942, while the libelant was engaged in the service of said ship, and while doing his duty and obeying the commands of the Master of the "Betsy Ross", libelant was struck on the head by a heavy timber, while at a warehouse located at Terminal Island, at the Port of Los Angeles, for the purpose of bringing the ship's net from the said warehouse to the "Betsy Ross"; and that by reason of being struck upon the head, as aforesaid, libelant sustained a cerebral concussion, scalp laceration and damage to a denture in his mouth.

IV.

That it is true that as a result of said injuries, as aforesaid, libelant was confined to a hospital for a period
[J.F.T. O'C Judge]

of one week and was ~~totally~~ disabled from the 4th day of May, 1942, to and including the 5th day of April, 1943.

V.

That as a result of the injuries as aforesaid, libelant was under the care of duly licensed physicians and incurred liability in the reasonable sum of \$94.90 for the services of said physicians and surgeons and the medication prescribed by them for treatment of the aforesaid injuries. The sum of \$21.40 was incurred for medication and the sum of \$73.50 for physicians and surgeons.

VI.

That it is true that by reason of the disability from the injuries as aforesaid, libelant is entitled to demand and have the said ship pay his reasonable expenses incurred in and about his support, from May 11, 1942 to April 5, 1943, inclusive, which said sum is at the rate of \$2.50 per day, and that the amount due libelant therefore is \$825.00.

VII.

That it is true that the said Diesel Screw "Betsy Ross" is an American vessel and was during the currency of process herein, within the District of Southern California, and within the jurisdiction of this Honorable Court. [34]

VIII.

That it is true that libelant is a seaman, within the designation of persons permitted to sue herein without furnishing Bond for or prepayment of or making deposit to secure fees and costs for the purpose of entering in and prosecuting suits conformable to the provisions of Title 28, Section 837, U.S.C.A.

IX.

That it is true that all and singular the premises are true, and within the Admiralty and maritime jurisdiction of this Honorable Court.

X.

That it is true while this libelant was so confined and unable to work by reason of the injuries sustained

as aforesaid, the said ship engaged in fishing from on or about the 4th day of May, 1942 to on or about the 15th day of February, 1943, the period of the proposed Tuna and Sardine fishing seasons for which libelant was employed and during the said seasons the said ship took and caught a great quantity of Tuna and Sardines, of which the libelant's one-seventeenth lay or share was worth the sum of \$5,050.46, which the master and owners of the said ship refused to pay the libelant.

XI.

[Not Found J.F.T. O'Connor Judge]

That the allegations of the paragraphs referred to in paragraph First of the Third Cause of Action are true.

XII.

That the allegations of paragraph Second of the Third Cause of Action are true.

XIII.

That it is true that the accident, as set forth in paragraph III of libelant's First Cause of Action was without any contributing fault or neglect on the part of the libelant, but it is not true that it was a proximate result or the proximate result of the negligence of Frank Muljat, part owner and member of the crew of said vessel. That the allegations of subdivisions (1), (2), (3) and (4) and each and every allegation contained therein of paragraph Third of libelant's Third

[J.F.T. O'Connor Judge]

Cause of Action, are ~~not~~ untrue. [35]

XIV.

That it is not true that libellant has been generally damaged in the sum of Fifteen Thousand Dollars, or any part thereof by reason of his Third Cause of Action.

XIV.

That it is not true that libelant negligently and carelessly failed and neglected to perform work which he was doing in an ordinarily skillful manner, and it is not true that libelant negligently and carelessly failed to conduct himself in an ordinarily careful and prudent manner in and about the management of his person, and it is not true that libelant was negligent or careless in any respect, and it is not true that the injuries sustained by him were the proximate result of any carelessness and or negligence on his part. That each and all of the allegations of respondents' Separate and Special Defense are not true.

From the foregoing, the court concludes that:

I.

The libelant is entitled to a judgment against respondents and claimants in the sum of Five Thousand Fifty and 46/100 (\$5,050.46) as wages for the Tuna and Sardine seasons ending on the 15th day of February, 1943, with interest thereon from February 15, 1943, at the rate of 7% per annum, and for the additional sum of \$825.00, as maintenance from May 11, 1942 to April 5, 1943, with interest therefrom from April 6, 1943, at the rate of Seven (7%) per cent per annum, and for the additional sum of \$94.90 for medical expenses.

II.

That libelant is not entitled to recover upon his Third Cause of Action for damages for the injuries sustained by him.

III.

That upon motion of libelant a Final Decree shall be entered in accordance herewith providing therein that the decree be satisfied or an appeal be taken within ten days after service of Notice of Entry of said decree on the claimants or their proctor, or the [36] stipulators for costs and value on the part of the said Diesel Screw "Betsy Ross", shall cause the engagements of their stipulations to be performed, or show cause within four days after said ten days, or on the first day of jurisdiction thereafter, why execution should not issue against them, their goods, chattels and lands, to satisfy the decree.

Dated: December 23, 1943.

J. F. T. O'CONNOR
United States District Judge.

Judgment entered Dec. 23, 1943. Docketed Dec. 23, 1943. CO Book 22, page 497. Edmund L. Smith, Clerk. By Louis J. Somers, Deputy.

[Endorsed]: Filed Dec. 23, 1943. [37]

In the United States District Court, Southern District
of California, Central Division.

IN ADMIRALTY
No. 2693 OC

STEVE RULJANOVICH,

Libelant,

-vs-

DIESEL SCREW "BETSY ROSS," her tackel, apparel, engines and furniture, and PETER CEKALOVICH, Master of said vessel, and PETER CEKALOVICH, DOMINIC MRATINICH and FRANK MULJAT, her owners,

Respondents.

FINAL DECREE

This cause having come on regularly to be heard on the pleadings and proofs, and having been argued and submitted by the advocates for the respective parties, and due deliberation having been had, it is now, on motion of David A. Fall, Proctor for libelant,

Ordered, Adjudged and Decreed, that the libelant recover of and from the respondents herein the sum of Five Thousand Fifty and 46/100 (\$5,050.46) Dollars, with interest thereon from the 15th day of February, 1943 at 7% per annum, amounting to \$302.05; for a further sum of Eight Hundred Twenty-five (\$825.00) Dollars, with interest thereon from April 6, 1943, at seven (7%) per annum, amounting to \$36.81; for the

further sum of \$94.90, and costs of libellant taxed in the sum of \$166.08, all to the sum of \$....., with interest thereon at the rate of seven (7%) per cent, per annum until paid, and it is further

[J.F.T. O'Connor Judge]

Ordered, Adjudged and Decreed that respondents have judgment against libellant upon his Third Cause of Action, and it is [38]

Ordered, Adjudged and Decreed, that unless this decree be satisfied or an appeal taken therefrom within [J.F.T. O'C]

~~ten~~ twenty days after service of Notice of Entry of this decree on the claimants or their proctor, the stipulators for costs and value on the part of the claimants of the said Diesel Screw "Betsy Ross" cause the engagements of their stipulators to be performed, or show cause within four days after said ten days, or on the first day of jurisdiction thereafter, why executions should not issue against them, their goods, chattels and lands, to satisfy this decree.

Dated: December 23, 1943.

J. F. T. O'CONNOR
United States District Judge.

Approved as to form only as provided in Rule 44.

HENRY E. KAPPLER
Proctor for Claimants and Respondents.

Judgment entered Dec. 23, 1943. Docketed Dec. 23, 1943. CO Book 22, page 502. Edmund L. Smith, Clerk. By Louis J. Somers, Deputy.

[Endorsed]: Filed Dec. 23, 1943. [39]

[Title of District Court and Cause.]

PETITION FOR APPEAL

To the Honorable J. F. T. O'Connor, Judge of the United States District Court, Southern District of California, Central Division:

Respondents and claimants, Diesel Screw "Betsy Ross", Peter Cekalovich, Dominic Mratinich and Frank Muljat, and each of them, respectfully pray that they and each of them may be permitted to take an appeal from the final decree entered in the above Court on the 23rd day of December, 1943, in favor of the libellant and against the respondents and claimants, to the United States Circuit Court of Appeals, for the Ninth Circuit, for the reasons specified in the Assignments of Error which is filed herewith and your petitioners desire to supersede the execution of said final decree, and herewith tender a bond in such amount as the Court may require [40] for such purpose, and pray that a supersedeas be allowed as part of the allowance of said appeal and the amount of the bond fixed so as to operate as a supersedeas.

Dated at Los Angeles, California, this 20th day of January, 1944.

Henry E. Kappler

Henry E. Kappler

Proctor for Respondents and Claimants.

[Endorsed]: Filed Jan. 21, 1944. [41]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The petition of respondents and claimants, Diesel Screw "Betsy Ross", Peter Cekalovich, Dominic Martinich and Frank Muljat, for an appeal from the final decree entered in the above entitled cause on the 23rd day of December, 1943, in favor of the libellant and against the respondents and claimants, is hereby granted and the appeal is allowed.

It Is Further Ordered that a certified transcript of the record herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit; and

It Is Further Ordered that upon petitioners filing a bond in the sum of Seven Thousand Five Hundred (\$7,500.00) Dollars, with sufficient surety or sureties and conditioned as required by [42] law, the same shall operate as a supersedeas of the decree made and entered in the above cause, and shall suspend and stay all further proceedings in this court until the determination of said appeal to the said United States Circuit Court of Appeals.

Dated at Los Angeles, California, this 21st day of January, 1944.

J. F. T. O'Connor
United States District Judge.

[Endorsed]: Filed Jan. 21, 1944. [43]

[Title of District Court and Cause.]

NOTICE OF APPEAL

The respondents and claimants, Diesel Screw "Betsy Ross", Peter Cekalovich, Dominic Mratinich and Frank Muljat, and each of them, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of this Court entered herein on the 23rd day of December, 1943, in favor of the libellant and against the respondents and claimants.

Dated: January 20th, 1944.

Henry E. Kappler

Henry E. Kappler

Proctors for Respondents and Claimants.

[Endorsed]: Filed Jan. 21, 1944. [44]

[Title of District Court and Cause.]

NOTICE OF FILING BOND ON APPEAL

To the libellant and to his Proctor David A. Fall, Esq.:

You and Each of You Will Please Take Notice that the bond on the appeal herein was approved by the Honorable J. F. T. O'Connor, and was filed in the office of the Clerk of the District Court of the United States, for the Southern District of California, Central Division, on the 21st day of January, 1944, and said bond was executed and given by the Fireman's

Fund Indemnity Company, a corporation, authorized to execute surety bonds pursuant to the laws of the State of California and said bond is by reference thereto made a part hereof and a copy of said bond is attached hereto and marked Exhibit "A".

Dated: Los Angeles, California, this 22nd day of January, 1944.

HENRY E. KAPPLER

Henry E. Kappler,

Proctor for Respondents and Claimants. [45]

EXHIBIT "A"

In the United States District Court Southern District of California Central Division

Steve Ruljanovich, Libellant vs. Diesel Screw "Betsy Ross", etc., Peter Cekalovich, etc., and Peter Cekalovich, Dominic Mratinich and Frank Muljat, her owners, Respondents In Admiralty No. 2693 O'C.

BOND ON APPEAL

(Supersedeas and for Costs)

Know All Men By These Presents:

Whereas, respondents and claimants, Diesel Screw "Betsy Ross", Peter Cekalovich, Dominic Mratinich and Frank Muljat have, and each thereof has appealed or is about to appeal from that certain final decree heretofore made and entered in the above entitled cause on the 23rd day of December, 1943, in favor of the libellant and against said respondents and claimants; and

Whereas, Firemen's Fund Indemnity Company, a corporation, organized and existing under and by virtue of the laws of the State of California and qualified to act as a surety in this Court, is held and firmly bound unto the libellant herein and unto whom it may concern, in the sum of Seven Thousand Five Hundred Dollars (\$7,500.00), for the payment of which well and truly to be made it does hereby bind itself, its successors and assigns firmly by these [46] presents and agrees that in case of default or contumacy on the part of the said appellants, Diesel Screw "Betsy Ross", Peter Cekalovich, Dominic Mratinich or Frank Muljat, execution may issue against it, its goods, chattels and lands;

Now, Therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal with effect and answer all damages and costs if they fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

Dated: Los Angeles, California, this 20th day of January, 1944.

FIREMAN'S FUND INDEMNITY COMPANY

By A. I. STODDARD

A. I. Stoddard

Attorney-in-Fact.

Examined and recommended for approval as provided in Rule 13.

HENRY E. KAPPLER

Henry E. Kappler

Proctor for Appellants.

State of California
County of Los Angeles—ss.

On this 20th day of January, 1944, before me, M. E. Beeth, a Notary Public in and for said..... County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared A. I. Stoddard, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Fireman's Fund Indemnity Company and acknowledged to me that he subscribed the name of Fireman's Fund Indemnity Company thereto as principal, and his own as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the said County of Los Angeles the day and year in this certificate first above written.

[Seal]

M. E. BEETH,

Notary Public in and for the County of Los Angeles,
State of California.

My commission expires March 23, 1945.

I hereby approve the foregoing bond this 21st day of January, 1944.

J. F. T. O'CONNOR
United States District Judge.

Received copy of the within Notice of Filing Bond on Appeal this 25th day of January, 1944.

DAVID A. FALL
Proctor for Libellant.

[Endorsed: Filed Jan. 25, 1944. [47]]

[Title of District Court and Cause.]

BOND ON APPEAL
(Supersedeas and for Costs)

Know All Men By These Presents:

Whereas, respondents and claimants, Diesel Screw "Betsy Ross", Peter Cekalovich, Dominic Mratinich and Frank Muljat have, and each thereof has appealed or is about to appeal from that certain final decree heretofore made and entered in the above entitled cause on the 23rd day of December, 1943, in favor of the libellant and against said respondents and claimants; and

Whereas, Fireman's Fund Indemnity Company, a corporation, organized and existing under and by virtue of the laws of the State of California and qualified to act as a surety in this Court, is held and firmly bound unto the libellant herein and unto whom it may concern, in the sum of Seven Thousand Five Hundred Dollars (\$7,500.00), for the payment of which well and truly to be made it does hereby bind itself, its successors and assigns firmly by these presents and agrees that in case of default or contumacy on the part of the said appellants, Diesel Screw "Betsy Ross", Peter Cekalovich, Dominic Mratinich or Frank Muljat, execution may issue against it, its goods, chattels and lands;

Now, Therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal with [48] effect and answer all damages and costs if they fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

Dated: Los Angeles, California, this 20th day of January, 1944.

FIREMAN'S FUND INDEMNITY COMPANY

[Seal]

By A. I. Stoddard

A. I. Stoddard

Attorney-in-Fact.

State of California

Los Angeles County of—ss.

On this 20th day of January, 1944, before me, M. E. Beeth, a Notary Public in and for said County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared A. I. Stoddard known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Fireman's Fund Indemnity Company and acknowledged to me that he subscribed the name of Fireman's Fund Indemnity Company thereto as principal, and his own as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the saidCounty of Los Angeles the day and year in this certificate first above written.

[Seal]

M. E. BEETH,

Notary Public in and for the.....County of Los Angeles State of California.

My commission expires March 23, 1945.

Examined and recommended for approval as provided in Rule 13.

Henry E. Kappler

Henry E. Kappler

Proctor for Appellants.

I hereby approve the foregoing bond this 21 day of January, 1944.

J. F. T. O'CONNOR
United States District Judge

The premium charged for this bond is \$150.00 Dollars per annum.

[Endorsed]: Filed Jan. 21, 1944. [49]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Now come the respondents and claimants, and each thereof, and hereby assign the following errors in the above entitled proceedings:

I.

The District Court erred in finding that the subject matter of the first cause of action set forth in the third amended libel was within the Admiralty jurisdiction of the United States District Court, for the reason that the exclusive remedy of the libellant was and is within the exclusive jurisdiction of the Industrial Accident Commission of the State of California or the United States Employees' Compensation Commission.

II.

The District Court erred in finding that the subject [50] matter of the second cause of action set forth in the third amended libel was within the Admiralty jurisdiction of the United States District Court, for the reason that the exclusive remedy of the libellant was and is within the exclusive jurisdiction of the Industrial Accident Commission of the State of California or the United States Employees' Compensation Commission.

III.

The District Court erred in finding that the libellant was disabled from May 4th, 1942, to and including April 5th, 1943.

IV.

The District Court erred in concluding that the libellant was entitled to the sum of \$94.90, or any other sum in excess of the sum of \$33.00, as or for medical care or attention or medicines.

V.

The District Court erred in finding that the reasonable expenses incurred by the libellant for his support from May 11, 1942, to April 5, 1943, amounted to the sum of \$2.50 per day, or any other sum per day in excess of the sum of \$1.25.

VI.

The District Court erred in concluding that the libellant was entitled to recover the sum of \$825.00 as and for maintenance.

VII.

The District Court erred in finding that the libellant was entitled to recover the sum of \$5,050.46, for a 1/17th lay or share of the catch for both the Tuna and Sardine fishing seasons, when the evidence was undisputed that the libellant sustained his injuries prior to the commencement of the Tuna season.

VIII.

The District Court erred in finding that the libellant was entitled to a 1/17th lay or share of the fish caught and sold during the Sardine season. [51]

IX.

The District Court erred in refusing to find that the award made in favor of the libellant in the pro-

ceedings commenced before the Industrial Accident Commission of the State of California, was a bar to libellant's first and second causes of action in the third amended libel in the United States District Court.

X.

The District Court erred in finding that the libellant was entitled to any maintenance whatever for any period of time whatever.

XI.

The District Court erred in finding that the libellant was injured while in the service of the ship.

XII.

The District Court erred in finding that the libellant is a seaman within the designation of persons permitted to sue without furnishing bond for or prepayment of or making deposit to secure fees and costs for the purpose of entering in and prosecuting suits conformable to the provisions of Title 28, Section 837, U.S.C.A.

XIII.

The District Court erred in finding that all and singular the premises are true and within the Admiralty and Maritime jurisdiction of said Court.

XIV.

The District Court erred in finding that the Diesel Screw "Betsy Ross" engaged in fishing from on or about the 4th day of May, 1942 to on or about the 15th day of February, 1943.

XV.

The District Court erred in finding that on or about the 3rd day of May, 1942, the Diesel Screw "Betsy Ross" was destined for a nine months Tuna and Sardine fishing seasons. [52]

XVI.

The District Court erred in finding that the libellant was entitled to any sum whatsoever upon either the first or second causes of action set forth in the third amended libel.

XVII.

The District Court erred in finding that the libellant was entitled to a decree against the respondents and claimants, or any of them, in the sum of \$5,050.46, or any other sum whatsoever or at all, upon the second cause of action set forth in the third amended libel.

XVIII.

The District Court erred in finding that the libellant was entitled to recover the sum of \$919.90, or any other sum whatsoever or at all, upon the first cause of action set forth in the third amended libel.

XIX.

The District Court erred in not concluding that the libellant was not entitled to recover any sum whatsoever or at all from the respondents and claimants, or any of them, and in not concluding that the third amended libel should be dismissed with costs in favor of the respondents and claimants.

Dated: Los Angeles, California, this 20th day of January, 1944.

Henry E. Kappler

Henry E. Kappler

Proctor for Respondents and Claimants.

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the above entitled Court:

I hereby request that the record on appeal in the above entitled cause include the following:

1. Second Amended Libel in Rem and in Personam.
2. Claim of Peter Cekalovich, Dominic Mratinich and Frank Muljat.
3. Order releasing Diesel Screw "Betsy Ross", her tackle, apparel, engines and furniture to claimants.
4. Exceptions to Second Amended Libel and Memorandum of Points and Authorities attached thereto.
5. Minute Order of June 14th, 1943, ruling on Exceptions to Second Amended Libel.
6. Third Amended Libel.
7. Answer to Third Amended Libel. [54]
8. Findings of Fact and Conclusions of Law.
9. Final Decree.
10. Petition for Appeal.
11. Assignment of Errors.
12. Order Allowing Appeal.
13. Supersedeas and Cost Bond.
14. Notice of Appeal.
15. Citation and acknowledgment of service of copy of citation, petition for appeal, notice of appeal and assignment of errors.
16. Notice of Filing Bond on Appeal and Acknowledgment of service of copy thereof.
17. Testimony of Libellant taken in Court of:
 1. Steve Ruljanovich.
 2. Dorrell G. Dickerson.
 3. Dr. Eddie Monroe Gordon.

4. Milica Ruljanovich.
 5. Clark B. Watsworth.
 6. Peter Cekalovich.
 18. Libellant's Exhibits Nos. 1, 2 and 3.
 19. Testimony of Respondents and Claimants taken in Court of:
 1. Carl R. Bishop.
 2. Winter W. Christian.
 3. Deposition of Steve Ruljanovich (Read into evidence at pages 160 to 201 inclusive, Reporter's Transcript filed herewith).
 4. Nick Karuza.
 20. The respondents' Exhibits A and E.
 21. That portion of Minute order of December 20th, 1943, entering judgment in favor of libellant on the first and second causes of action and in favor of respondents and claimants on the third cause of action of the Third Amended Libel. [55]
 22. All written stipulations which have been or shall be entered into by and between proctors for the respective parties, and orders of the United States District Court based thereon, prior to the completion and transmittal of the Record on Appeal to the Clerk of the Circuit Court of *Appeal*, and which said written stipulations are not contained in the Reporter's Transcript.
 23. This Praecipe and Affidavit of Service by Mail.
- The respondents and claimants file herewith the original and one copy of Reporter's Transcript.
- Dated: Los Angeles, California, this 14th day of February, 1944.

HENRY E. KAPPLER

HENRY E. KAPPLER

Proctor for Respondents and Claimants. [56]

(AFFIDAVIT OF SERVICE BY MAIL—
1013a, C. C. P.)

State of California,
County of Los Angeles—ss.

Roy Keown, being first duly sworn says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 424 So. Broadway, Los Angeles, California; that on the 14th day of February, 1944, affiant served the within Praeceptum on the Libellant in said action, by placing a true copy thereof in an envelope addressed to the proctor of record for said libellant at the office address of said proctor, as follows: "David A. Fall, Esq., 388 West 7th Street, San Pedro, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the proctor for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

Roy Keown

Subscribed and sworn to before me this 14th day of February, 1944.

[Seal]

Enes Sarvello

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed Feb. 14, 1944. [57]

[Title of District Court and Cause.]

POINTS UPON WHICH APPELLEE INTENDS
TO RELY UPON THE APPEAL

Now comes the libellant, and hereby assigns the following errors in the above entitled proceedings.

I.

The District Court erred in finding that it is not true that the injury sustained by Steve Ruljanovich was a proximate result of or the proximate result of the negligence of Frank Muljat, part owner and member of the crew of the Diesel Screw "Betsy Ross."

II.

The District Court erred in finding that it was not true that Frank Muljat negligently and carelessly pushed over a 4 by 4 inch timber approximately 16½ feet in length, which was standing on one of its ends, unfastened and leaning against the interior wall of the Warehouse of the Crescent Warehouse Company, where libellant had been instructed to assist in moving a net to the "Betsy Ross", and as the direct and proximate result of Respondent Frank Muljat negligently and carelessly pushing over the aforesaid timber, without any warning, striking the libellant on the head. [58]

III.

The District Court erred in finding "That the allegations of subdivisions (1), (2), (3) and (4), and each and every allegation contained therein of paragraph Third of libellant's Third Cause of Action are untrue."

IV.

That the District Court erred in finding "That it is not true that libellant has been generally damaged in

the sum of Fifteen Thousand Dollars, or any part thereof by reason of his Third Cause of Action."

V.

That the District Court erred in not finding that libellant was generally damaged in the sum of Fifteen Thousand (\$15,000.00) Dollars or a substantial part thereof.

VI.

That the District Court erred in not finding that the allegations contained in subdivisions (1), (2) and (3) of paragraph Third of libellant's Third Cause of Action are true.

VII.

That the District Court erred in finding "That it is not true that libellant has been generally damaged in the sum of Fifteen Thousand (\$15,000.00) Dollars, or any part thereof by reason of his Third Cause of Action.

VIII.

That the District Court erred in concluding "That libellant is not entitled to recover upon his Third Cause of Action for damages for the injuries sustained by him."

IX.

That the District Court erred in not concluding that libellant sustained general damages in the sum of Fifteen Thousand (\$15,000.00) Dollars or a substantial part thereof.

DAVID A. FALL

Proctor for Libellant.

Dated: San Pedro, California, this 2nd day of February, 1944. [59]

State of California,
County of Los Angeles,—ss.

Marion M. Fall being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is 388 W. 7th St. San Pedro, California, that on the 2nd day of February, 1944, affiant served the within Points Upon Which Appellee Intends to Rely Upon Appeal on the Respondent in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said Respondent at the office address of said attorney, as follows: "Henry E. Kappler, Attorney at Law, 639 South Spring Street, Los Angeles, 14, California"; and by then sealing said envelope and depositing the same, with postage thereon duly prepaid, in the United States Post Office at San Pedro, City of Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or/and there is a regular communication by mail between the place of mailing and the place so addressed.

MARION M. FALL

Subscribed and sworn to before me this 2nd day of February, 1944.

(Seal)

DAVID A. FALL

Notary Public in and for the County of Los Angeles,
State of California

[Endorsed]: Filed Feb. 3 - 1944. [60]

[Title of District Court and Cause.]

STIPULATION RE EXHIBITS AND
REPORTER'S TRANSCRIPT

It Is Hereby Stipulated that the original exhibits in the above entitled cause and the original Reporter's Transcript need not be reproduced or otherwise incorporated in the record on appeal to be transmitted to the Clerk of the Circuit Court of Appeals, for the Ninth Circuit, by the Clerk of the United States District Court and that the originals of said exhibits and the original Reporter's Transcript may be transmitted to the Clerk of the Circuit Court of Appeals, for the Ninth Circuit, to be there considered as part of the record on appeal required to be sent from the United States District Court to the Circuit Court of Appeals, with the same force and effect as though the same were and each thereof was reproduced and thus incorporated in the record on appeal.

Dated: March 1st, 1944.

David A. Fall

David A. Fall

Proctor for Libellant. [61]

Henry E. Kappler

Henry E. Kappler

Proctor for Respondents and Claimants

It Is So Ordered.

Dated:1944.

J. F. T. O'Connor

United States District Judge.

[Endorsed]: Filed Mar. 2 - 1944. [62]

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME TO PRE-
PARE AND FILE APOSTLES ON APPEAL
AND ORDER THEREON.

It Is Hereby Stipulated that Respondents and Claimants may have to and including the 13th day of March, 1944 within which to prepare and file the Apostles on Appeal in the above entitled cause.

Dated: March 1st, 1944.

David A. Fall

David A. Fall

Proctor for Libellant

Henry E. Kappler

Henry E. Kappler

Proctor for Respondents and Claimants.

It Is So Ordered.

Dated: March 2, 1944.

J. F. T. O'Connor

United States District Judge [63]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 63 inclusive contain the original Citation and full, true and correct copies of: Second Amended Libel; Claim; Stipulation filed Mar. 25, 1943; Order filed Mar. 25, 1943; Exceptions to Second Amended Libel; Minute Order Entered June 14, 1943; Third Amended Libel; Answer to Third Amended Libel; Minute Order Entered Dec. 20, 1943; Findings of Fact and Conclusions of Law; Final Decree; Petition for Appeal; Order Allowing Appeal; Notice of Appeal; Notice of Filing Bond on Appeal; Bond on Appeal; Assignments of Error; Praecipe; Points Upon which Appellee Intends to Rely upon the Appeal; Stipulation and Order re Exhibits and Reporter's Transcript and Stipulation and Order Extending Time to Prepare and File Apostles on Appeal which, together with original Libellant's Exhibits 1, 2 and 3 and Respondents' Exhibits A and E and original Reporter's Transcript, transmitted herewith, constitute the Apostles on Appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing apostles amount to \$13.35 which sum has been paid to me by Appellant.

Witness my hand and the seal of said District Court this 9th day of March, 1944.

[Seal]

EDMUND L. SMITH,

Clerk

By Theodore Hocke

Deputy Clerk

In the District Court of the United States,
Southern District of California,

Central Division.

Before Hon. J. F. T. O'Connor, Judge.

STEVE RULJANOVICH,

Libelant,

vs.

PETER CEKALOVICH, et al.,

Respondents.

No. 2693—O'C—Adm.

REPORTER'S TRANSCRIPT
OF
TESTIMONY AND PROCEEDINGS ON TRIAL.

APPEARANCES:

For Libelant: David A. Fall, Esq.

For Respondent: Henry E. Kappler, Esq.

Los Angeles, California, Thursday, December 16,
1943. 10 A. M.

Mr. Kappler: At this time, your Honor, might I, at least for my record, make the preliminary objection that the court has no jurisdiction to proceed with this matter for the reason that the Industrial Accident Commission of the State of California is the tribunal vested with the sole and exclusive jurisdiction over any injuries which this man might have sustained?

In support of my objection, your Honor, I would like to offer in evidence a copy of the Application for Ad-

justment of Compensation, which was filed by the libelant in this matter with the Industrial Accident Commission on the same date that this libel was filed in this court.

I take it the court, of course, will overrule my objection, in view of the fact that we threshed this matter out at a prior time, but I think I should raise it at this time so the matter will appear in the record.

(Discussion.)

Mr. Kappler: In support of this motion, your Honor, I would like to offer in evidence a copy of the application for adjustment of compensation. With your Honor's permission I would like to take that copy out of the certified copy of the entire record which I have received from the Industrial Accident Commission.

The Court: No objection. [2*]

Mr. Fall: We wish to interpose an objection upon the ground that it is incompetent, irrelevant, and immaterial, and not tending to prove or disprove any issue before the court.

The Court: Proceed.

Mr. Fall: Was the application admitted?

The Court: Yes.

Mr. Fall: May we have an exception?

The Court: Yes, you have an exception.

The Clerk: This will be marked Respondent and Claimant's Exhibit A.

*Page numbering appearing at top of page of original Reporter's Transcript.

RESPONDENTS AND CLAIMANTS' EXHIBIT
NO. A.

San Francisco Office
119 State Building

Los Angeles Office
602 State Building

State of California
Department of Industrial Relations
Industrial Accident Commission

APPLICATION FOR ADJUSTMENT OF CLAIM
NO. 62423

Received 1/19/43

Received 1/19/43

Steve Ruljanovich

642 W. 14th Street,
San Pedro Cal.

Applicant—

Applicant's Address

vs.

Peter Cekalovich, Dominic
Mratinich, Frank Muljat,
Diesel Screw "Betsy Ross"

642 W. 14th Street,
San Pedro Cal.

Employer

Employer's Address

John H. Black

742 Broad Ave.

Wilmington, Calif.

Employer's Insurance Carrier

Insurance Carrier's Address

1. Steve Ruljanovich, 59, while employed as a Seaman
Name of Employee Age When Injured Occupation at Time
Fisherman on May 4, 1942, at Terminal Island
of injury Date of Injury City, Town or Place
California, by Diesel Screw "Betsy Ross" sustained
Where Injury Occurred Name of Employer
injury arising out of and in the course of the em-
ployment, as follows: a timber fell upon the head of
Explain How Injury Was Received

(Respondents and Claimants' Exhibit No. A.)

applicant resulting in Concussion of the brain, laceration of scalp, contusions of the head, possible skull fracture

2. On said date said employer's insurance carrier was John H. Black

Name of Insurance Company

3. Injured left work on May 4, 1942, and disability continued to Still disabled, 19....

Date Could Have Resumed Work

4. Last payment of indemnity on none paid, 19....; last medical furnished by employer on June, 1942.

5. Medical or surgical treatment has been rendered by United States Public Health Service, Dr. Dunbar and Dr. Cassidy, of San Pedro

Give Name and Address of All Doctors Who Treated or Examined, and State by Whom Furnished

6. The employee's date of birth was Oct. 18, 1882 and his wages \$......per.....working.....days per week

Day, Week or Month

1/17 share of fishing catch. Average at time about \$40.00 per week.

If Board, Lodging, or Other Advantages Were Furnished by the Employer Without Charge, State What and Market Value of Each

To Be Used in Death Cases Only

7. It is claimed that the deceased left the following named dependent.....:

Name	Age	Relationship	Address
.....
.....
.....
.....
.....

(Respondents and Claimants' Exhibit No. A.)

8. A question has arisen with respect to the liability of the employer or insurance carrier, and the general nature of the claim in controversy is: Liability for Compensation and medical expenses
-

Wherefore, It is requested that a time and place be fixed for hearing and notice given, and that an order or award be made granting such relief as the party or parties may be entitled to.

Steve Ruljanovich

Dated at San Pedro, Jan. 19, 1943

David A. Fall

Agent, or Attorney for Applicant

388 W. 7th Street, San Pedro

Address Calif.



STEVE RULJANOVICH

Signature of Applicant or Applicants

NOTE.—Under the provisions of the Workmen's Compensation, Insurance and Safety Laws, the applicant need only state the general nature of the claim in controversy. When application has been filled out and signed by applicant it must be filed with or mailed to the nearest office of the Industrial Accident Commission without delay. Due notice will thereafter be given of the time and place of hearing. Either party may be represented in person, by attorney or other agent.

[Stamped]: 12/16/42.—No. A in evidence.

STEVE RULJANOVICH,

the libelant, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Fall:

Mr. Fall: I believe it will be necessary to have an interpreter. We took this man's deposition and had quite a bit of difficulty. Have you any objection to having the Secretary of the Fishermen's Union to interpret?

Mr. Kappler: He has a very good speaking knowledge of English. I don't want anybody from the Fishermen's Union up here to interpret. He understood and answered all the questions I put to him.

Mr. Fall: I am amazed at Mr. Kappler's statement, [3] because one particular question was asked the man ten times before he was able to understand a very simple question.

The Court: The Court will determine that after the man is sworn. If the Court finds he does not understand the English language, we will have an interpreter.

Mr. Fall: I believe it would be very unjust to this man, because of his very limited knowledge.

The Court: We do not know until we find out. Swear the witness.

The Clerk: State your full name.

The Witness: Steve Ruljanovich.

Q. By Mr. Fall: What is your name?

A. Steve Ruljanovich.

(Testimony of Steve Ruljanovich.)

Q. Were you a member of the crew of the "Betsy Ross"? A. Yes, sir.

Mr. Kappler: I move to strike the answer, for the purpose of making an objection. I object to it upon the ground that it calls for a conclusion and opinion of this witness. We can find out, your Honor, what the facts are with reference to his employment, if any.

The Court: I will overrule the objection. Proceed.

Q. By Mr. Fall: When were you hired as a member of the crew of the "Betsy Ross"?

A. The 3rd of May.

Q. Of what year? A. 1942. [4]

Q. Who employed you?

A. Peter Cekalovich.

Q. Was he the master of the "Betsy Ross"?

A. Yes, sir.

Q. You had a conversation with him on the 3rd day of May, 1942? A. Yes.

Q. Where did you have that conversation?

A. He told me about going fishing.

Q. Where was it?

A. The 3rd of May, on Sunday.

Q. Where were you and where was Mr. Cekalovich when you had this conversation? A. Out home.

Q. In San Pedro? A. In San Pedro.

Q. Was anyone else with you at the time?

A. No.

Q. Just you and Mr. Cekalovich? A. Yes.

Q. What did he say to you?

A. He said would I like to go fishing.

(Testimony of Steve Ruljanovich.)

Q. What did you say?

A. I said, "Yes, I like to go fishing with you for tuna and sardines, because I worked in the cannery for the French Sardine, because if you don't give me a chance to [5] fish for sardines I lose my seniority list."

Q. What did he say? A. He says yes.

Q. Did he tell you when you were supposed to start in work? A. We started in next day.

Q. What did he tell you?

A. He told me to go on the boat.

Q. When did he tell you to go on the boat?

A. In the slip.

Q. In this conversation on the 3rd of May, did he tell you when to report on board the boat?

A. Yes; he told me we clean it up a little bit for putting the nets.

Q. On the 3rd of May did he tell you what day you were to come down on the boat?

A. Tomorrow, the 4th of May.

Q. He told you to come down on the 4th of May?

A. Yes.

Q. Did you go down on the 4th of May to the boat?

A. Yes.

Q. What time of the day did you go on the boat?

A. In the morning.

Q. Did you go down to the boat alone or did you go with somebody?

A. I been with him in the machine. [6]

Q. With him—do you mean the captain?

A. The captain.

(Testimony of Steve Ruljanovich.)

Q. Mr. Cekalovich? A. Yes.

Q. When you got down to the boat, what did you do?

A. We cleaned it up a little bit to prepare to put a net.

Q. Who told you to do that?

A. The captain.

Q. Where was the boat at that time?

A. At that time it was in the slip.

Q. Was that on the San Pedro side?

A. San Pedro, yes.

Q. Later that morning was the boat moved?

A. The boat moved to Fish Harbor.

Q. That is on Terminal Island? A. Yes, sir.

Q. Were you on the boat when it was moved?

A. Yes, sir.

Q. When you got to Fish Harbor, what did you do?

A. We went with the truck to the Crescent Warehouse. I went.

Q. Who told you to go? A. The captain.

Q. Did the captain go also?

A. No, the captain, he went with his machine.

Q. You went on the truck? [7]

A. On the truck.

Q. How many other men went?

A. Five or six. I don't remember; some crew of the boat.

Q. Did Mr. Muljat go?

A. I think he be there, yes.

Q. And Mr. Mratinich? A. Yes.

(Testimony of Steve Ruljanovich.)

Q. When you got to the warehouse, what did you do? Did you get off the truck, or what?

A. We went with the truck. When we came to the warehouse I came down from the truck.

Q. Did the rest of the men get off the truck too?

A. Yes; sure.

Q. Then what did you do?

A. I went in the warehouse, close to the net.

Q. As you would walk in the door of the warehouse, on what side was the net?

A. On the right side.

Q. How far inside the warehouse was the net?

A. Close to the door, like about three or four feet high. I don't know exactly. The net was on the platform.

Q. That platform was how high?

A. I don't know sure; about three or four feet, something like that; may be more.

Q. How big was this net? [8]

A. A tuna net, more than 200 fathoms; 300; something like that.

Q. More than 200 fathoms? A. Yes.

Q. When you went in the warehouse, what did you do? A. I sat in the wharf of cement.

Q. Do you mean on the platform?

A. No, behind the net; the wharf is cement.

Q. The wall of cement? Was there a little cement wall there? A. Yes.

Q. You sat on that? A. Yes.

(Testimony of Steve Ruljanovich.)

Q. Did the captain tell you where you were going to take the net?

A. He say come the truck inside the warehouse. Then we are ready to load the net.

Q. Did the captain tell you where you were going to take the net to? A. Right away.

Q. Did he tell you what you were going to do with the net? A. He told me put it in the truck.

Q. Where was the truck going to take it, if you know? A. From the French Sardine.

Q. What were you going to do with the net? [9]

A. Fishing.

Q. On what boat? A. "Betsy Ross."

Q. You were going to take that net to the "Betsy Ross"? A. Yes.

Q. After you sat down inside the warehouse wall there, were there any other of the crew near you?

A. Yes, a couple of fellows sat down close to me.

Q. Did you see Frank Muljat?

A. Yes, I seen him at that time.

Q. What did you see him do?

A. Some place; I don't know if he was sitting or not, but he been there.

Q. Did you see anyone get up to the net?

A. No, I don't see nobody.

Q. Where was the truck when you sat down on this cement wall?

A. The truck came inside; I don't know exactly; the truck in the warehouse came half of it inside.

Q. Did he drive in with the front of the truck or did he start to back in? A. Started to back in.

(Testimony of Steve Ruljanovich.)

Q. Then what, if anything, happened? What happened then?

A. Well, I just tried to get up to be prepared to load the nets and stand up like this; I don't see nothing. [10] Then something fell on my head and knocked me down.

Q. After you were knocked down, what is the next thing you remember?

A. I don't know exactly because I be just like a dead man. I don't know; my head running, bleeding; I don't know; exactly just like a dead man.

Q. Then were you taken to some doctor's office?

A. Yes.

Q. Do you know where that doctor's office was?

A. I don't know, only they take me afterwards, I hear they put me in the machine and they take me to Steller's office.

Q. Dr. Steller in Wilmington?

A. In Wilmington.

Q. Do you know how long you were at Dr. Steller's office?

A. Not before; I know at this time I went to Dr. Steller's office.

Q. How long did you stay there?

A. I been there, I don't know exactly; for an hour or something, because I don't know myself. I don't remember.

Q. Did they take X-rays at Dr. Steller's office?

A. I think they take X-rays, they tell me afterwards, yes.

Q. Was any blood coming from your head?

A. Sure. [11]

(Testimony of Steve Ruljanovich.)

Q. Whereabouts on your head was the blood coming from?

A. It bled all over. I don't know exactly.

Q. Did you afterwards find out you had a cut on your head?

A. Yes.

Q. Where was that cut?

A. Right in the center of my head.

Q. Was it on top of your head?

A. It was stitched right on top; seven stitches.

Q. They took seven stitches?

A. Yes.

Q. In the top of your head?

A. Right in the center of my head.

Q. Where were you when they took the stitches?

Was that in Dr. Steller's office?

A. Yes.

Q. From Dr. Steller's office, where did you go?

A. Well, I don't know myself. They took me in a machine.

Q. What kind of a machine?

A. Pete Cekalovich's machine.

Q. Now, from Dr. Steller's office where did you go?

A. To the hospital.

Q. What did they take you to the hospital in?

A. San Pedro Hospital.

Q. Did you go in Mr. Cekalovich's automobile? [12]

A. No; I don't know myself, because I don't remember at that time. Afterwards they told me the ambulance take me.

Q. You don't remember what kind of a machine you went in?

A. No, I don't know.

Q. They told you it was an ambulance?

A. They told me afterwards, the next time.

(Testimony of Steve Ruljanovich.)

Q. How long were you in the San Pedro Hospital?

A. For a week.

Q. What doctor or doctors took care of you in the San Pedro Hospital?

A. Dr. Petrich.

Q. Is Dr. Petrich connected with the United States Public Health Service?

A. Yes, sir.

Q. Do you know whether Dr. Petrich is in San Pedro now?

A. No, I don't think so. He moved some place.

Q. He was transferred?

A. Transferred, yes.

Q. In the hospital, how did you feel?

A. I feel—I don't feel very good, because, you know, afterwards my head—I feel kind of my head big.

Q. Aside from feeling big, did it bother you in any way?

A. No, I feel kind of heavy.

Q. Did you try to get up at any time in the hospital?

A. No; no, I couldn't. [13]

Q. Did your head ever ache in the hospital?

A. Sure.

Q. I want you to tell me just how you felt, how your head felt, or any other part of your body felt.

A. Just my head; I think my head was so big.

Q. Aside from just feeling big—

A. Sure.

Q. How did it feel?

A. I feel like headache.

Q. In the hospital, if you tried to move from one side of the bed to the other, did that change or affect the way you felt?

A. Pretty near everytime they moved me, nurses.

(Testimony of Steve Ruljanovich.)

Q. The nurses moved you? A. Yes.

Q. When that happened, would that make you feel any different with reference to your head?

A. Sure.

Q. What difference? How would you feel?

A. When I move I feel kind of heavy; not my body; my head seem heavy.

Q. Did they take any X-rays at the hospital?

A. Yes.

Q. After you left the hospital, where did you go?

A. I go home.

Q. Did you go to bed, or were you able to stay up? [14]

A. No; my friend, he take me with a machine, Steve Clarvich, because I couldn't walk. He take me in the machine, to the house where I live.

Q. When you got home did you go to bed or did you stay up? A. I went right away in bed.

Q. How long did you remain in bed continuously?

A. Five days I stay in bed.

Q. Five days after you got home? A. Yes.

Q. Then did you get up once in a while?

A. I got up once in a while; then I lay down. I try to walk.

Q. How did you feel when you got up?

A. When I got up I feel dizziness; started dizziness.

Q. Did you have any more headaches after you got home?

A. Yes, sure, always bother, my head dizzy.

(Testimony of Steve Ruljanovich.)

Q. When you got up you would feel dizzy?

A. Sure.

Q. After you would get up and feel dizzy, if you would lie down would the dizziness go away?

A. I don't feel dizzy when I lie down.

Q. How many days, or was it weeks, afterward did you go to bed, or stay in bed part of the day?

A. After I got up from that five days, then I lie down for an hour, then I get up again a little bit and try to [15] walk some.

Q. How long did that go on before you were able to stay up all day? A. Do you mean how long—

Q. I will withdraw that. You said you would be up for a while and then you would lie down for a while? A. Yes.

Q. How many days or weeks did that go on, that you had to lie down for a while during the day?

A. For a week. Then I went to see after Dr. Petrich.

Q. You saw Dr. Petrich after?

A. One week.

Q. How did you go to Dr. Petrich's office?

A. He take me, Mr. Cekalovich, with his machine.

Q. Dr. Petrich's office is up in the Federal Building in San Pedro? A. Yes.

Q. The United States Public Health Service, is that correct? Dr. Petrich's office is in the United States Public Health Service? A. Yes.

Q. Did you see Dr. Petrich again after this first time? A. I been a couple of times, yes.

(Testimony of Steve Ruljanovich.)

Q. Did you go to another doctor after that?

A. Yes, he told me to go to another doctor. [16]

Q. Dr. Petrich told you to go to another doctor?

A. Yes.

Q. What other doctor did you go to?

A. Dr. Dunbar.

Q. He is in San Pedro? A. Not now.

Q. At that time he was in San Pedro?

A. Yes, sure.

Q. He went into the armed forces, in the Army or Navy, did he? A. Navy.

Q. How long did you go to Dr. Dunbar?

A. I been five or six times; something like that.

Q. Was it right after that that Dr. Dunbar went in the Navy?

A. He told me to go down, if I wanted to see another doctor, Dr. Cassidy.

Q. Then you went to Dr. Cassidy? A. Yes.

Q. How long did you see Dr. Cassidy?

A. Six or seven times.

Q. When was the last time you saw Dr. Cassidy?

A. Something around August.

Q. August. Did you see another doctor after you saw Dr. Cassidy?

A. Yes; he sent me to a professor, right here in Los [17] Angeles Memorial Hospital. I have got his name. Cartfield.

Q. In the White Memorial Hospital?

A. Memorial Hospital, because I don't remember like before.

(Testimony of Steve Ruljanovich.)

Q. How did you feel during all this period of time? How did your head feel?

A. I feel better now, sure, but I couldn't work like before.

Q. During the period of time you were going to these doctors, Dr. Dunbar and Dr. Cassidy, how did your head feel?

A. I feel the same way when I be there; the same thing.

Q. What do you mean by "the same thing"?

A. The same dizziness.

Q. The same dizziness?

A. Dizziness. You mean when I been to see Dr. Cassidy?

Q. Yes, how did your head feel then?

A. I feel just the same, bad.

Q. What do you mean by "the same"? Did your head bother you?

A. I feel some days a little less, a little worse, but still dizziness at that time.

Q. Did you have any headache during that period of time? [18] A. Yes.

Q. Would they last very long or would they be of short duration?

A. Last me sometimes twenty minutes or half an hour.

Q. They would come and go?

A. Yes, come and go.

Q. After you saw Dr. Cassidy, what was the next doctor that you went to for treatment?

A. I told you Cartfield. The last one Walsworth.

(Testimony of Steve Ruljanovich.)

Q. When did you start going to him?

A. I started to him around September. I don't remember exactly; around September.

Q. How long did you continue to go to Dr. Walsworth?

A. I continued even I been before yesterday.

Q. You are still going? A. Sure.

Q. When you were under treatment of Dr. Walsworth, did you continue to get better?

A. I feel a little better. He gave me a couple of times some medicine.

Q. Has he kept you on medicine all during this period of time? A. Yes.

Q. To the present time? A. Sure.

Q. Do you have any headaches now? [19]

A. I tell you I feel better, but never like before. I don't remember everything like before.

Q. At the present time you are feeling a great deal better though?

A. I feel better, sure, but not like before, no.

Q. Do you have any headaches any more?

A. Headaches, it come sometimes because when I work I can't last very long. I have to leave the job every once in a while. It used to be I been working seven years at the cannery, and I never missed one day. Now I can't last very long.

Q. When did you start back to work, Mr. Ruljanovich? A. July 19.

Q. July 19 of this year? A. Of this year.

Q. Is there much noise in the cannery?

(Testimony of Steve Ruljanovich.)

A. Not much. Sometimes when they get more fish, running four or five machines, there is more noise.

Q. These machines you are referring to are machines that carry the cans and put the tops on the cans?

A. Yes. I work more light job than before.

Q. What do you do now?

A. I put the can in the cases. They call it tailing.

Q. Off from the conveyor belt?

A. Yes; they come on the machine and I take them and put them in the cases. [20]

Q. Does somebody else take the cases away or do you? A. Sure.

Q. Do you carry the cans away? A. No.

Q. At the time you had this injury, did you have a plate in your mouth of false teeth? A. Yes.

Q. Did you have both upper and lower plates?

A. Lower plate.

Q. Just the lower plate?

A. Both, but the lower plate was broken.

Q. When did you find that out, that the lower plate was broken?

A. Four teeth they take out. The next day, or the same day, he bring me home, I guess it was Mr. Zeka and Frank Muljat showed me the split on my teeth.

Q. After they took them out they showed them to you? A. Yes.

Q. Then you found out your teeth were split?

A. Yes.

Q. Do you remember how much you paid Dr. Dunbar or how much you paid to Dr. Dunbar?

A. Yes, I remember.

(Testimony of Steve Ruljanovich.)

Q. Do you have the receipts?

A. I got the receipt here.

Q. Do you have all of them? [21]

A. But I don't pay the medicine. That was all I received from my doctor.

Q. There are five or six here? A. Yes.

Q. From Dr. Dunbar? A. Yes.

Q. Are those all of the receipts from Dr. Dunbar?

A. Yes. Maybe I mistaken. I don't know. That is right, there was five.

Mr. Fall: Counsel, I believe you have seen these.

A. Excuse me, I spent some medicine he don't give me; that was \$5.00 and six, something like that.

Mr. Fall: If the court please, I notice the doctor from the United States Public Health Service is here with some records. He advised me he would appreciate it very much if we could put him on out of order, because he should get back to his duties. May we at this time call him out of order?

The Court: Call the doctor.

DR. EDDIE MONROE GORDON,

called as a witness on behalf of Libelant, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your full name?

The Witness: Eddie Monroe Gordon. [22]

Direct Examination

Q. By Mr. Fall: Dr. Gordon, you are the medical officer in charge of the United States Public Health Service, San Pedro branch?

A. No, Dr. Hedrick is in charge.

(Testimony of Dr. Eddie Monroe Gordon.)

Q. What is your position at the United States Public Health Service in San Pedro?

A. I am given supervision of the out patient office and contact facilities.

Q. Do you have with you the record of the United States Public Health Service for the treatment given Mr. Ruljanovich for the injury he sustained on May 4, 1942?

A. Yes, I do.

Mr. Fall: Mr. Kappler, do you want to approach the bench with reference to reading this into the record?

Mr. Kappler: I haven't seen that.

Mr. Fall: Neither have I.

A. These are records of the treatment he received both in the Hospital and at the out patient office. This is the hospital record.

Q. The hospital record indicates what his first treatment was, Doctor?

A. He was admitted to the hospital—

Mr. Kappler: May I examine the record first? I will stipulate that the entire record may go in, your Honor.

Mr. Fall: As I understand it, Doctor, these records [23] are to be returned to the United States Public Health Service, is that correct?

A. Yes. I have no authority to surrender the records.

Mr. Fall: Counsel, these can't go into evidence, only by reading into evidence. I am going to have him read certain portions of them, and if you want you can use what you want and keep adding as we go along, and probably save time.

(Testimony of Dr. Eddie Monroe Gordon.)

Mr. Kappler: So far as I am concerned, your Honor, I think probably the whole record should be read in evidence so that we can have the picture of what happened.

The Court: Proceed.

Mr. Fall: There is some of this I won't read. I will take from the first page, clinical record, the brief diagnosis indicates wound—the date is 5/4/42; wound, laceration of scalp. This is the hospital record, and 5/10/42 his condition was improved. Discharged.

Mr. Kappler: I think also, your Honor, that the authority of the United States Public Health Service to accept this man is indicated by the words "Authority: Master's certificate," and is signed by Dr. John Petrich.

Mr. Fall: The clinical record, history of the present disease: chief complaint, use patient's own words.

The Court: What is the date?

Mr. Fall: There appears no date on this page, your Honor. [24]

A. That was all taken at the same time of the physical examination. The date is indicated on that date.

Mr. Fall: He was struck on the head by a timber. Probable cause; date and mode of onset of disease; date and cause of injury; cause of admission; subjective symptoms; patient states that about 10 a. m. today, while working on some nets from a ship, which were stored in a warehouse in Wilmington, California, a large timber fell from overhead and struck him on the head. He was not unconscious. He states he was given emergency treatment at the Wilmington Emergency

(Testimony of Dr. Eddie Monroe Gordon.)

Hospital, where a laceration of the scalp was sutured. In a conversation with the doctor who treated him, the doctor stated that X-rays of the skull were taken, but failed to reveal any fractures. The patient is quite rational.

Mr. Kappler: And conscious. And this is signed by Dr. Petrich.

Mr. Fall: Clinical record: objective symptoms, 5/4/42, 12:30 p. m., temperature 98.4; pulse 88, regular; respiration 22; blood pressure 160/80. In general patient conscious and rational. Had large laceration about 4 inches long longitudinal in midline over vertex of scalp, already sutured with six dermal sutures. Three small rubber drains in place. Eyes: pupils equal, react to light and accommodation. Ears and nose: negative. Mouth and throat: false upper and lower dentures. Neck: negative. [25] Head: normal contours. Heart: regular tone and rhythm. Lungs: clear to percussion or oscillation. Abdomen: negative. G.U.: negative. Extremities: negative. Neurological: reflexes normal. No evidence of any serious intracranial injury. Impression: laceration of scalp: Under observation for skull fracture and intracranial injury. (Signed) Dr. John M. Petrich.

Clinical record: Ward surgeon, progress and treatment record: 5/4/42; 1:00 p. m. Patient admitted to hospital with a head injury received while unloading nets from a warehouse, with other members of crew from his ship, a large piece of timber struck him on top of head this morning. He states he was not unconscious. He received emergency treatment at the

(Testimony of Dr. Eddie Monroe Gordon.)

Wilmington Emergency Hospital, where a laceration of the scalp was sutured.

General: patient conscious and rational; does not appear seriously injured. Pulse 88, regular, good quality. Blood pressure 160/80. Head: change bandage over lacerated area. Neurological: reflexes normal. Impression: laceration of scalp. Under observation for skull fracture and intracranial injury.

Orders: 1. Bed rest. 2. Soft diet, 12 c.c. daily. 3. Take blood pressure and pulse at 3:00 p.m. 4. Nembutal, 1-1/2 grains at hours of sleep and as necessary. (Signed) Dr. Petrich.

Clinical record: 5/5/42. Ward surgeon's progress and [26] treatment record: Patient states he is feeling very well; has slight pain at site of injury, otherwise no complaints. No signs of intracranial injury. Pulse 88, regular. Blood pressure 130/90. Reflexes normal. Incision appears clean and to be healing well. No apparent drainage.

Orders: Restricted fluid intake to 12 c.c. daily.

The same clinical record, 5/6/42. Patient feels very well. Has no complaints except slight pain at site of laceration. Laceration healing well. Drains removed. No evidence of intracranial injury. Pulse 80, regular, good quality. Blood pressure 124/90. Reflexes, normal. Complete blood count taken on admittance showed only 2,800,000 and 70 per cent hemoglobin.

Orders: Hemo cronin, 2 tablets three times a day.

Same clinical record, 5/7/42. Laceration healing well. Looks clean. Redressed.

(Testimony of Dr. Eddie Monroe Gordon.)

Same clinical record, dated 5/8/42. Laceration healing well. Sutures removed. Patient feeling very well. Has no complaints.

Orders: X-ray of skull.

Same clinical record, 5/9/42. X-ray was negative for fracture. Patient feels very well; has no complaints.

Orders: May be up today and discharged today if can make arrangements.

General diet, fluids ad lib. [27]

The doctor says that means as much as he wanted.

5/10/42. Same record: feeling well, no complaints. Ordered discharged.

At the end of each one of these days the record is initialed "J.P." That is Dr. Petrich? A. Yes.

Mr. Fall: Same record, date 5/11/42. Summary: This patient was admitted to the San Pedro Hospital on 5/4/42 with a large laceration of the scalp received as the result of a blow on the head by a falling piece of timber. The same morning of admittance he was given emergency treatment at the Wilmington Emergency Hospital, where the laceration was sutured. When admitted he was quite conscious and rational, and stated he was not unconscious at any time after the injury. X-rays of the skull were today, 5/8/42, and failed to reveal any fractures.

The Witness: I think what it means, they were taken on 5/8; that means in our hospital. That was just a slip.

(Testimony of Dr. Eddie Monroe Gordon.)

Q. Instead of the word "today" it should read "taken"; the last sentence should be "X-rays of the skull were taken on 5/8/42, and failed to reveal any fractures."

Repeated examinations in hospital failed to reveal any signs of intracranial injury.

Diagnosis: 1. Laceration of scalp. Laceration healed well and he was discharged on 5/10/42. Condition [28] improved. Signed J. Petrich.

Mr. Kappler: On Tuesday, May 5, appears the notation at seven o'clock: appetite good. On the same date at 2 a.m. appears the notation: awake often. No special pain. On the following day, May 6, at 7 o'clock, appears another notation: appetite good. And preceding that appears the notation: a good night.

Mr. Fall: That was earlier. It appears he was given nembutal.

Q. That was the evening before? A. Yes.

Mr. Fall: At 9 o'clock.

Mr. Kappler: The same notation appears on the 7th at 6 a.m.: a good night. At 7 o'clock appears the notation: appetite good. On the same day, later on in the day, apparently 11:30, appears another notation: appetite good.

Mr. Fall: That night he was given—and that night was the evening of the 7th, he was again given nembutal.

Mr. Kappler: On Friday, the 8th, appears the notation at 6 a.m.: slept well. At 7 o'clock: appetite good. At 11:30 appears another notation: appetite good. At 4:30 on the same day another notation: appetite good.

(Testimony of Dr. Eddie Monroe Gordon.)

Mr. Fall: That evening, May 8th, at 9 o'clock: again given nembutal.

Mr. Kappler: What is the dosage there, Doctor?
[29]

A. The order is 2 grains. That is capsules of 1-1/2 grains.

Mr. Kappler: On May 9th, notation at 6 o'clock: slept well. At 7 o'clock: appetite good. 11:30, another notation: appetite good. And at 1 p.m.: Up and about. At 6:00 p.m. on the same date, that is, May 9th, appears a notation: P.M. care, alcohol and powder. Made comfortable. Good day.

Mr. Fall: That same day at 9:00 p.m. he was again given nembutal.

Mr. Kappler: The following day, May 10th, at 6 a.m. appears the notation: Had a good night. At 11:30 on May 10 appears the notation: Patient dismissed from hospital, walking.

There appears in the file, your Honor, a document entitled "Master's Certificate of Service of Sick or Injured Seaman," signed by Frank Muljat, and authorizes the United States Public Health Service to render medical care and attention to this man.

There is another one on the same date signed by Peter Cekalovich, master of the vessel.

The Court: What date?

Mr. Kappler: The same date, apparently, and signed by Muljat, the other is signed by Cekalovich, one of the owners and master of the vessel.

The Court: What is the date? [30]

(Testimony of Dr. Eddie Monroe Gordon.)

Mr. Kappler: May 4. I think undoubtedly the law requires that it be signed by the master.

Mr. Fall: I would like to read into the record the clinical record, radiograph report from Ward No. 23, May 8, 1942, A.P. and stereo lateral of skull, information requested. Bone pathology; clinical impression, fracture in vertex of skull. Signed by J. Petrich, Assistant Surgeon.

X-ray findings. No definite evidence of skull fracture.

(Short recess.)

Mr. Fall: I would like to read into evidence a card, known as what, Doctor? A. Form 1971-E.

Mr. Fall: Form 1971-E. What is this card?

A. An out patient card.

Q. With reference to Steve Ruljanovich. History: This patient was released from San Pedro Hospital on 5/10/42, where he was treated for a large laceration of the skull since 5/4/42. Had received a heavy blow on the head. However, he showed no signs of intracranial injury. Reported for check-up. He states he has some soreness of neck muscles.

Notation: Laceration healed well. No evidence of complication. Signed by J. Petrich, Assistant Surgeon.

Record of treatment, 5/13/42: Chloroform liniment to neck muscles. 5/19/42, Dr. Smith saw this patient and [31] ruled he was not eligible for treatment. However he was to be given insurance form for time he was treated in hospital; certificate to out patient and hospital treatment given. Copies for the hospital folder. Signed Sherman.

(Testimony of Dr. Eddie Monroe Gordon.)

Q. Sherman was a doctor?

A. No, he was just a clerk.

Mr. Fall: Is there anything else you want?

Mr. Kappler: Yes. Your Honor, the only other thing is the clinical record: An examination of the blood revealed 2,800,000 red corpuscles, 10,700,000 white corpuscles with hemoglobin per centage of 70 per cent.

There appears to be a temperature chart in the file. Can you interpret that temperature chart for us from the time the man entered until the time he left?

A. At 2:00 a.m. his temperature was normal, but from 2:00 p.m. on the day of admittance until 6:00 p.m. on May 7 he ran an intermittent type of fever with the temperature never below 100 degrees Fahrenheit. From May 7 until discharge his temperature was normal.

Q. When you say never above 100, what is normal temperature? A. 98.6.

Mr. Kappler: That is all that I have.

Mr. Fall: I have no further questions from the doctor.

Mr. Kappler: I want to ask one question: (Q.) Was Dunbar connected with the United States Public Health Service [32] at all? A. No, sir.

Q. Dr. Cassidy? A. No, sir.

Mr. Kappler: That is all.

Mr. Fall: I do have one other question:

Q. Doctor, is Mr. Ruljanovich eligible for treatment in the United States Public Health Service?

A. At the present time?

Q. At that time was he eligible?

(Testimony of Dr. Eddie Monroe Gordon.)

Mr. Kappler: I object to that on the ground it calls for the conclusion and opinion of the witness upon a legal matter which is governed by the statutes of the United States, and I don't presume he would know. I think it would be a matter for your Honor's interpretation. The fact remains they did give this man aid down there.

The Court: What is the materiality of it?

Mr. Fall: It is going to be very material, your Honor, because after he was ruled ineligible and incurred expense for treatment over a considerable period of time, if he is eligible for treatment at the United States Public Health Service, and during that period of time he obtained treatment outside and failed to take advantage of it, then he is not entitled to recover for his expenses incurred for that treatment.

Mr. Kappler: The only objection I have, your Honor, [33] as to whether or not a fisherman would be entitled to the advantages of the United States Public Health Service would be a matter for the court to determine from a construction of the United States Statutes. Although the doctor may know what their practice is down there, the fact remains as to whether the man had a right to get that treatment, and is entirely something which would call for his conclusion.

The Court: I think that objection is good, counsel. If you develop all the facts connected with this man's employment, the court can determine that.

(Discussion.)

The Witness: A man still has a right to choose his own physician, even if he is entitled to treatment, he still has the right to go anywhere and pay for it. I don't see where that would enter—

(Testimony of Dr. Eddie Monroe Gordon.)

Mr. Kappler: I move that be stricken as a voluntary statement and calling for this man's conclusion with reference to what the rights of a seaman are under the general maritime law.

The Court: I will let it stand in the record. It is just a method of procedure.

Q. By Mr. Fall: Mr. Ruljanovich was not given any treatment after the 19th day of May, 1942?

A. There is no record of his having received any treatment from the Public Health Service. [34]

Q. That is, from the United States Public Health Service? A. Yes.

STEVE RULJANOVICH,

recalled.

Direct Examination

resumed

By Mr. Fall:

Q. Mr. Ruljanovich, these five receipts you have handed me are from Dr. Dunbar and are receipts for the money you paid him for treatment?

A. Yes, sir.

Q. And did you pay him on the same day that you were given treatment?

A. Cassidy I paid the same day, every time.

Q. The first one is June 23, \$5.00? A. Yes.

Q. The next one is July 9, \$2.00? A. Yes.

Q. The next one is July 23, \$2.00; August 11, \$2.00; and August 25, \$2.00. A. Yes.

Q. That was all you paid Dr. Dunbar?

A. Some medicine, I got no receipt of the medicine, \$5.50, something like that.

(Testimony of Steve Ruljanovich.)

Q. But the money that you paid to Dr. Dunbar is indicated by these receipts? [35] A. Yes, sir.

Q. They total \$13.00? A. \$13.00.

Mr. Fall: We offer in evidence these five receipts. They can be marked as one exhibit.

The Clerk: Libellant's Exhibit 1.

LIBELLANTS' EXHIBIT NO. 1.

W. Vernon Dunbar, M. D.
471 West Seventh Street
San Pedro, Calif.
Phone 282

No. 8712
June 23, 1942

Received of Mr. Steve Ruljanovich
Five and no/100.....Dollars
Bal. Brought Fwd
Amount Paid 5 — By Eleanor Hay
Balance Due

W. Vernon Dunbar, M. D.
471 West Seventh Street
San Pedro, Calif.
Phone 282

No. 8966
July 9 1942

Received of Mr. Steve Ruljanovich
Two and no/100.....Dollars
Bal. Brought Fwd.
Amount Paid 2 — By Eleanor Hay
Balance Due

(Libellants' Exhibit No. 1.)

W. Vernon Dunbar, M. D.

471 West Seventh Street

San Pedro, Calif.

Phone 282

No. 9195

July 23 1942

Received of Mr. Steve Ruljanovich

Two and no/100.....Dollars

Bal. Brought Fwd.

Amount Paid 2 —

By Eleanor Hay

Balance Due

W. Vernon Dunbar, M. D.

471 West Seventh Street

San Pedro, Calif.

Phone 282

No. 9473

August 11 1942

Received of Mr. Steve Ruljanovich

Two and no/100.....Dollars

Bal. Brought Fwd.

Amount Paid 2 —

By Eleanor Hay

Balance Due

W. Vernon Dunbar, M. D.

471 West Seventh Street

San Pedro, Calif.

Phone 282

No. 9718

August 25 1942

Received of Mr. Steve Ruljanovich

Two and no/100.....Dollars

Bal. Brought Fwd.

Amount Paid 2 —

By Eleanor Hay

Balance Due

[Stamped]: Date: 12/16/43. No. 1 in evidence.

(Testimony of Steve Ruljanovich.)

Q. By Mr. Fall: You have handed me four receipts from Dr. Cassidy. Were these sums paid to Dr. Cassidy on the same day that you went there for treatment? A. On the same day.

Q. The first one is September 16, 1942, \$2.00; November 19, \$2.00; December 4, \$1.50; January 23, 1943, \$2.00. A. Yes.

Q. A total of \$7.50 to Dr. Cassidy? A. Yes.

Mr. Fall: We offer these receipts in evidence.

The Clerk: Libellant's Exhibit 2.

LIBELLANTS' EXHIBIT NO. 2.

Save Your Receipts

E. S. Cassady, M. D.

804 So. Pacific Ave.

San Pedro, Calif.

Sept. 16 1942

Received of Mr. Steve Ruljanovich

Two and no/100.....Dollars \$2 no/100

E. S. Cassady, M. D.

Balance Due \$ In full

By H

Save Your Receipts

E. S. Cassady, M. D.

804 So. Pacific Ave.

San Pedro, Calif.

Nov 19 1942

Received of Rujnovich Mr. Steve

Two.....no/100 Dollars \$2 00/100

E. S. Cassady, M. D.

Office

Balance Due \$.....

By Hazel Robertson

(Libellants' Exhibit No. 2.)

Save Your Receipts

E. S. Cassady, M. D.

804 So. Pacific Ave.

San Pedro, Calif.

Dec. 4 1942

Received of Mr. Steve Ruljanovich

One and 50/100.....Dollars \$1 50/100

E. S. Cassady, M. D.

Balance Due \$ In full

By H

Save Your Receipts

E. S. Cassady, M. D.

804 So. Pacific Ave.

San Pedro, Calif.

Jan. 23 1943

Received of Mr. Ruljanovich

Two and no/100.....Dollars \$2 no/100

E. S. Cassady, M. D.

Balance Due \$ In full

By H

[Stamped]: Date: 11/26/43. No. 2 in evidence.

Mr. Kappler: I object to the admission, your Honor, of both Libellant's Exhibits 1 and 2, upon the ground that they are immaterial, there being no showing so far that any of the treatment which the libellant received from any of these doctors was not treatment which could not have been obtained at the United States Public Health Service.

Mr. Fall: The record is in without objection that he was ruled ineligible for treatment at the United States [36] Public Health Service. He was told to go elsewhere for treatment.

(Testimony of Steve Ruljanovich.)

The Court: In evidence.

Mr. Kappler: May we have an exception to that, your Honor?

The Court: Yes.

Q. By Mr. Fall: You have handed me four receipts from Dr. C. B. Walsworth. Were those amounts paid to Dr. Walsworth for treatment for your condition resulting from your injuries? A. Sure.

Q. You have handed me four receipts from Dr. Walsworth. Do those receipts indicate the total sums you paid to Dr. Walsworth? A. Yes.

Q. The first one is March 5, 1943, for \$6.50; April 20, 1943, \$5.00; July 12, 1943, \$5.00; November 5, 1943, \$11.50.

A. Excuse me. I couldn't find that receipt when I paid Dr. Cassidy the Memorial Hospital. I paid cash \$25.00. I couldn't find it, because I looked this morning and I couldn't find it.

Q. But these receipts from Dr. Walsworth totaling \$28.00 are all that you paid to Dr. Walsworth?

A. Yes, sir.

Mr. Fall: We offer these receipts of Dr. Walsworth as [37] libelant's next in order.

Mr. Kappler: I object on the same grounds.

The Court: In evidence.

The Clerk: Libelant's Exhibit 3 in evidence.

(Testimony of Steve Ruljanovich.)

LIBELLANTS' EXHIBIT NO. 3.

Mar. 5 1943 No. 508

Received of Mr S Ruljanovich

Six & 50/100.....Dollars

\$6.50 Dr C B Walsworth

cash

April 20 1943 No. 890

Received of Mr. S. Ruljanovich

FiveDollars

\$5.00 Dr. C. B. Walsworth

cash

July 12 194.... No.

Received of Steve Rujanovich

Five and no/100.....Dollars

\$5.00 Dr. C. B. Walsworth

Nov. 5 1943 No.....

Received of Steve Rujanovich

Eleven & 50/100.....Dollars

in full to date

\$11.50 Dr. C. B. Walsworth

[Stamped]: Date: 12/16/42. No. 3 in evidence.

Q. By Mr. Fall: You were examined by Dr. Courville in the White Memorial Hospital? A. Yes.

Q. Who sent you to Dr. Courville?

A. Dr. Cassidy.

Q. That was when you were under treatment with Dr. Cassidy? A. Yes, sir.

Q. What did that examination cost?

A. \$25.00.

(Testimony of Steve Ruljanovich.)

Q. And Dr. Courville is a neurologist?

A. Yes, sir.

Q. Do you know whether or not he is in the armed services now, in either the Army or Navy?

A. I don't know, Mr. Fall, because at that time he said to me maybe he go in the Army.

Q. Have you tried to contact him? A. Yes.

Q. In the last few months? A. Yes.

Q. Were you able to get in touch with him?

A. No. I be once over there. [38]

Q. Was he there then? A. I don't think so.

Q. You went to his office?

A. Yes, I been in the office; yes.

Q. And he wasn't there?

A. I don't think so. He says he go in the Army. I don't know now.

Q. Do you know how much money you spent for medicines?

A. Well, I spent for Walsworth about \$11.50 and for Dunbar \$5.60, something like that, and Cassidy \$4.30.

Q. You were examined by Dr. Dickerson, were you?

A. Yes, sir.

Q. Who sent you to Dr. Dickerson?

A. Lawyer Roberts from Wilmington.

Mr. Fall: You may cross examine.

(Adjournment was had until two o'clock p. m. of the same day.)

(Testimony of Murray H. Roberts.)

At 2:00 o'clock p. m.

Mr. Kappler: Before I start with cross examination of the libelant, your Honor, there is an attorney in the courtroom, Mr. Roberts, who is under subpoena, who is doing certain work at the harbor in the way of war shipping, and he informs me he would like to get out of here as soon as he can. I wonder if he can be called out of order.

The Court: He may be called out of order. Anything to [39] expedite the war.

MURRAY H. ROBERTS,

called as a witness on behalf of the Libelant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Murray H. Roberts.

Direct Examination

By Mr. Fall:

Q. Mr. Roberts, did you have occasion to employ Dr. Dickerson for the purpose of making some examination of Mr. Ruljanovich? A. I did.

Q. And those examinations were made when, do you recall? A. No, sir, I don't.

Q. Do you recall it was sometime—the examination was sometime in 1942?

The Court: Is this a doctor?

The Witness: No; I am an attorney.

The Court: I understood you were, but I thought, in making a physical examination, I was listening to a doctor.

(Testimony of Murray H. Roberts.)

Mr. Fall: No; he employed Dr. Dickerson for the purpose of making an examination of Mr. Ruljanovich.

The Court: All right, just so we don't get the doctors and lawyers mixed up.

Q. By Mr. Fall: You say Approximately August 1, 1942, [40] would be near the date of the first examination? A. I think so.

Q. Then sometime early in January, 1943, another examination was made? A. I think so.

Q. You received the reports, did you not?

Mr. Kappler: That is objected to as being utterly immaterial.

Mr. Fall: I am laying the foundation. I have got to call a doctor that is a hostile witness. He was employed by the insurance carriers, and is the only neurologist that saw the man at that particular period of time, and he would be the only one that could testify as to the man's condition as of August 1, 1942, and I anticipate he is going to be quite hostile, from some things that occurred, and I desire to lay the foundation because I may ask to examine him by leading questions, by reason of the fact that he is a hostile witness.

The Court: I don't see how you can accomplish that by this witness.

Mr. Fall: I want to lay the foundation to show by whom he was employed, and by whom his services or bill for his examination was paid.

Mr. Kappler: I object to that as immaterial.

The Court: I will overrule the objection, if that is counsel's only purpose. [41]

(Testimony of Murray H. Roberts.)

A. I drew a draft in payment of Dr. Dickerson's bill.

Q. By Mr. Fall: You drew a draft from what company? A. Not on any company.

Q. On what account?

A. I don't know what you mean by that.

Q. What did you pay him for?

A. I paid him for his services rendered.

Q. Out of what account did that money come?

A. I don't know. I drew a draft on an individual in payment of the bill.

Q. Do you have that draft?

A. I don't have have the original. The original was presented for payment in San Francisco.

Q. And that draft was drawn on the Occidental Indemnity Company or the Fireman's Fund Insurance Company? A. No, sir.

Q. It was drawn on John Black?

A. That is right.

Q. John Black is agent for the Occidental Indemnity Company, and the Fireman's Fund?

Mr. Kappler: I object to that as being immaterial.

The Court: You may answer.

A. He isn't an agent, no. He is our chief counsel.

Q. By Mr. Fall: He is chief counsel for the company, is that right?

A. That is right. That is, with reference to certain [42] types of coverage.

Q. And the particular type of coverage that was on the "Betsy Ross"?

(Testimony of Murray H. Roberts.)

Mr. Kappler: I object to that as being wholly immaterial.

The Court: There is no foundation for that, is there, counsel?

Mr. Fall: Maybe not.

The Court: Objection sustained.

Q. By Mr. Fall: You are employed by John Black, is that correct?

A. I am retained by him. I wouldn't use the word "employment" as describing my association.

Q. You have offices with John Black; his name is on your office in Wilmington?

A. His name appears on the door, with another name.

Q. Do you have the receipted bills sent by Dr. Dickerson?

A. No, sir, I do not.

Q. Did you ever receive one?

A. Did I? I received two of them.

Q. Where are they?

A. In San Francisco.

Mr. Fall: That is all.

Mr. Kappler: No questions. [43]

STEVE RULJANOVICH,
recalled.

Cross Examination

By Mr. Kappler:

Q. You recall, Mr. Ruljanovich, that you filed with the Industrial Accident Commission application to get compensation from your employer?

A. Compensation? I don't get nothing.

(Testimony of Steve Ruljanovich.)

Mr. Fall: May I offer something at this time? In view of the fact that the court has admitted a portion of the record which Mr. Kappler has taken this document from, I believe the whole record should be before the court, as long as the whole thing is certified; I think it would be a very good idea that the whole thing go in.

The Court: I think if there is any other part of the record that in any way explains the document that is offered in evidence, or is necessary to a proper interpretation of the document that is offered in evidence, then that document should be in evidence.

Q. By Mr. Kappler: Do you recall that on or about January 19, 1943, you signed the document that appears to be in this form?

Mr. Fall: We will stipulate that he did.

Q. By Mr. Kappler: Your examination by Dr. Courville, the neurologist, at the White Memorial Hospital, was made on or about January 31, wasn't it?

A. Yes. [44]

Q. In other words, it was after you had filed this application for the adjustment of your compensation, isn't that right. A. Yes.

Q. As a matter of fact, Mr. Ruljanovich, that Dr. Courville did not give you any medical treatment of any kind?

A. No; just an examination in the office.

Q. He just examined you? A. Yes.

Q. Isn't it a fact that the \$25.00 which you paid him was for the purpose of his making out a report which could be submitted to the Industrial Accident Commission as evidence?

(Testimony of Steve Ruljanovich.)

The Court: I think you will have to break up your sentences and make them shorter and in plainer language, because this witness does not understand large words. I think counsel could stipulate as to that.

Mr. Fall: There must have been two examinations. I know that the report of Dr. Courville was up before the Industrial Accident Commission, but I don't know whether that was obtained for that purpose. My recollection is that it was sent to one of the doctors in San Pedro and was obtained for that purpose, and was subsequently used, but I am not sure.

Mr. Kappler: In any event, the examination was made [45] after the application was filed. That is the point I wanted to bring out.

Mr. Fall: Find out if another examination was made by Dr. Courville.

Q. By Mr. Kappler: Did he examine you more than once? A. No, just once.

Q. You have itemized for his Honor a list of the doctor bills, then you made a separate list of the medicines which you purchased. You stated to the court that there was an item of \$11.50 for which you had received a receipt from Dr. Walsworth. Do you recall that? A. Yes.

Q. Then when you came back and gave your testimony about medicine, you listed \$11.50 for medicines incurred from Dr. Walsworth. A. Yes.

Q. Isn't it true that that is the same figure you are talking about?

A. Yes, but I don't show \$11.50. I have got no receipt with me, but I know exactly.

(Testimony of Steve Ruljanovich.)

Q. Did you pay Dr. Walsworth \$11.50?

A. I did.

Q. You also then incurred another expense of \$11.50?

A. No, excuse me. That is besides, I buy in the drug store, besides the visits.

Q. How do you arrive at a figure of \$11.50? Did you [46] keep a record of your purchases of drugs?

A. Sure.

Q. Where have you got that record?

A. I got it home.

Q. Can you bring it to court with you tomorrow?

A. Sure.

Mr. Kappler: I would like to offer in evidence, your Honor, the original deposition of the libelant, which was taken in Mr. Fall's office on October 23, 1943.

Mr. Fall: To which I object. The witness is in court.

The Court: Yes; I think the rule is, counsel, if the witness is here and he can be fully and thoroughly examined, the objection of Mr. Fall is good, but if you want to use it for any purpose—

Mr. Kappler: I was really only endeavoring to save time, your Honor.

The Court: I appreciate that, but the objection will have to be sustained.

Mr. Fall: Your Honor, if it is going to save time, I have no objection to its going in, but I think it should be read and not introduced at this time during the cross examination.

(Testimony of Steve Ruljanovich.)

The Court: Your objection is good, counsel. I will have to sustain it on the ground stated by counsel.

Mr. Fall: Counsel, if you want to save time, I will stipulate it may go in. [47]

Mr. Kappler: All right, then, I can read it at a later time, your honor.

The Court: Yes.

Q. By Mr. Kappler: Mr. Ruljanovich, let me ask you this: You recall the taking of your deposition in Mr. Fall's office? A. Yes.

Q. Who was present when you made changes in the deposition? A. What is that?

The Court: Show him what you mean, counsel. He is not familiar with legal proceedings.

Q. By Mr. Kappler: Do you recall the day that I was in Mr. Fall's office and asked you a lot of questions? A. Yes.

Q. There was a lady there who took down the examination in shorthand? A. Yes.

Q. Thereafter she wrote it up? A. Yes, sir.

Q. This document was shown to you, wasn't it, after that? A. Yes.

Q. Where was that? In Mr. Fall's office?

A. Mr. Fall's.

Q. Who was present besides yourself and Mr. Fall? [48]

A. You and Mr. Fall and my daughter.

Q. After it was written up, Mr. Ruljanovich?

A. After you and Mr. Fall.

(Testimony of Steve Ruljanovich.)

Q. That was when I asked you the questions.

A. Sure.

Q. After this was all typed up, which was after I left the office, you saw this document, didn't you?

A. Yes.

Q. Who was there at that time when you made these corrections in the document?

A. Because I made a mistake. You see, I made á lot of mistakes. I know that; you know I can't speak, and I made mistakes. That is why I need an interpreter.

Q. I want to know who was there when you corrected the deposition.

A. I was. I been in Mr. Fall's office.

Q. Was there anyone else there besides Mr. Fall and yourself?

A. It was with my daughter.

Q. That is Mrs. Cekalovich?

A. Mrs. Cekalovich.

Q. Were all these corrections made in your own handwriting?

A. No.

Q. Who made them?

A. I guess my daughter. [49]

Q. Your daughter made the corrections

A. Yes.

Q. Is that your handwriting where it says "S. R."?

A. Yes, this is mine.

Q. Each place where it says "S. R." is yours?

A. Sure.

Q. Did anybody suggest to you that certain changes should be made in the deposition?

A. No.

(Testimony of Steve Ruljanovich.)

Q. Did you talk it over with Mr. Fall and your daughter before you made the changes?

A. No, because I no understand, because I don't understand every words.

Q. So you made the changes because you did not understand at the time the question was asked?

A. Yes, I told you I don't remember everything like before.

Q. You say you are taling cans right now at the French Sardine Company? A. Yes.

Q. How many hours a day do you work down there at the present time?

A. Sometimes six or seven; it depends upon how the fish—

Q. It depends on how the fish run? A. Yes.
[50]

Q. On occasions since you went back to work in July you have worked overtime, haven't you?

A. I was a couple of times overtime, because he tell me he be short of men. I try a couple of times, he make me work, and I stayed home after that six or seven days. Of course I get tired; I can't last very long.

Q. Aside from that, though, you have been employed continuously since July; is that right?

A. Yes.

Q. As I understood from your deposition, you are making more money now than you were when you were working for the French Sardine Company, before you were employed on the "Betsy Ross"?

(Testimony of Steve Ruljanovich.)

The Court: That is too complicated. I don't understand it myself. I don't know how you would expect a man like this to understand it, counsel.

Mr. Fall: Counsel, I will stipulate that the rate of pay in 1941 and the early part of '42 for the men in the cannery was 80 cents an hour, and sometime between May, 1942, and July of 1943 they increased the pay to 90 cents an hour.

Mr. Kappler: I will accept the stipulation. That is all, your honor.

Mr. Fall: I think it is in the deposition anyway.

The Court: Any further questions?

Mr. Fall: No, I have none, your Honor. [51]

DR. DORRELL G. DICKERSON,

called as a witness on behalf of the Libelant, being first duly sworn, was examined and testified as follows:

The Clerk: What is your full name?

The Witness: Dorrell G. Dickerson.

Direct Examination

Br. Mr. Fall:

Q. Dr. Dickerson, you made an examination of Steve Ruljanovich at the request of Murray Roberts, or rather two examinations?

A. Two examinations, sir.

Q. One of them on August 1, 1942, and one January 9, 1943? A. That is right.

Q. Doctor, of what school of medicine are you a graduate?

(Testimony of Dr. Dorrell G. Dickerson.)

A. George Washington University, Washington, D. C., 1917.

Q. You are specializing in neurology?

A. Neurology and brain surgery.

Mr. Fall: Will you stipulate to Dr. Dickerson's qualifications?

Mr. Kappler: Yes.

Q. By Mr. Fall: On January 9, 1943, you made a written report to Mr. Roberts, did you?

A. Yes, that is the second one. I made the first one on August 1, 1942. That is the last one, January 9, [52] 1943.

Q. I show you—

A. I have them here.

Q. —a copy that I have here, signed by you. Will you take a look at that and see if that is the report you made on January 9, 1943?

A. Yes, that is right.

Mr. Fall: We offer this in evidence.

Mr. Kappler: I object to it on the ground it is immaterial and is not the best evidence. The doctor is here in court and he can testify to what he found.

The Court: Objection sustained. You can ask the doctor any questions you desire, counsel, from the report.

Q. By Mr. Fall: Doctor, you made an examination of him first on 8/1/42. What, if any, were the complaints at that time?

A. To use his words, which I took down here, "I get dizzy spells and headaches. This bone in my neck

(Testimony of Dr. Dorrell G. Dickerson.)

is sore." He indicates the lower cervical spine. And "I sleep lightly." Those were his complaints.

Q. And on your examination what were your findings?

A. I will read them here. I examined Mr. Ruljanovich in my office and there was a friend present. I don't know the gentleman's name. He was a short, well developed, stocky man; weighed about 160 pounds. His head was normal except for a scar which was irregular in shape at the top of the skull, at vertex. There was no depression or [53] any elevation of the skull. The scar was about $\frac{3}{4}$ of an inch away from the mid line, slightly back of the vertex, about $2\frac{1}{2}$ by 3 inches, irregular. The healing had been good and normal. The ears negative. Tonsils either had been removed or extremely small. I could hardly see them. Mouth in fair condition; teeth partly out. He was wearing dentures, which he said had been broken in the accident.

The neck was normal. No grating of the bones or crepitus. He was complaining of soreness around the seventh cervical spine. That is the lower cervical. But he was able to do all the usual tests of the neck.

The thyroid you couldn't feel. The glands of the neck were not enlarged; could not be felt.

The heart sounds were moderately accentuated; a little sharper than the ordinary condition.

The blood pressure was 160/85.

The arteries of the arms, I could feel them rotate under my fingers.

(Testimony of Dr. Dorrell G. Dickerson.)

Pulse rate normal. The volume was good.

The extremities were normal.

I examined the sense of smell; it was normal, both sides.

He had a disturbance of vision, what is called myopic state; about half normal; 20 over 40. The optic nerve was normal; what we call fundi, negative. No nystagmus. Ocular movements normal. No double vision. Twitching of [54] the eye in face was the same on either side. The face was symmetrical. Bite equal. Face nerves normal. No disturbance of sensation. Tongue, when asked to stick it out, came out near the midline. Hearing was normal.

Wever was referred. Had good strong shoulder muscles; equal. All deep reflexes were present, arms and legs, about one plus in arms and shoulders. Superficial reflexes present and normal. No pathological reflexes.

Sensory tests all normal.

Motor tests: no weakness or atrophy. Coordination normal. Testing the cerebellum, it was normal. No disturbance of speech. Cerebral lobes normal, parietal normal; occipital lobes of the brain normal. Visual fields in normal condition. The Romberg test was good; sways in the Romberg posture. When I had him put his feet together and close his eyes, he wobbled a little bit from side to side. He walked normally and naturally.

That was the extent of my examination.

Q. On that report what were your conclusions?

(Testimony of Dr. Dorrell G. Dickerson.)

A. This man cooperates splendidly. Does not make any effort to exaggerate his test. There are no signs of organic brain injury. He has moderate high blood pressure, which results in vertigo; that may last several months, and especially for a person past middle life.

Another symptom he complains of, he states that there is tenderness of the seventh cervical spine, which will [55] resolve in time, possibly four or five months.

I suggested rest and the avoidance of direct sun rays; heat, massage, and I felt there would be a recovery from all of the symptoms. I advised treatment for the hypertension and dizziness, and diagnosed that he was temporarily totally disabled.

Q. That condition was essentially the same when you examined him on January 9, 1943, was it, Doctor?

A. I did not hear the first part of the question.

Q. Was that condition essentially the same when you examined him on January 4, 1943?

A. I will have to read this again to be sure about that. I haven't read it, and it is a matter of some little time.

Q. Do you have a copy of your report that you made on January 4, 1943?

A. Yes, I have it here.

Q. You might go ahead and read your conclusions.

A. I might state this interval history. He has not been working since he was here last, August 1, 1942. He says he has done no work, no home chores; that he has seen Dr. Cassidy about once a month at San Pedro. He said the progress remains about the same.

(Testimony of Dr. Dorrell G. Dickerson.)

I asked him how he felt and his complaints. He complained of dizziness and said the spine behind—can't touch it at times, because it is sore. When I walk I get a grab [56] in my head. I don't feel like working because of the dizzy head and the sore spine. I don't sleep very good because the grabbing in my head makes me nervous, and I have to get up in the night. My appetite is not so bad—medium. I weigh about 163 pounds.

The examination of his general physical condition showed him about the same; a stocky, swarthy man, five feet five inches, 165 pounds. Head normal in shape and size. Scar; the healing had been good and normal.

Ears negative.

Tonsils out.

Mouth clean. Partial denture. Lower central incisors need attention. Some gingival irritation present. Tender on seventh cervical spine. No spasm or limitation in motion. No crepitus, which would be grating of the bones.

Thyroid could not be felt. Post cervical lymph nodes not enlarged.

Heart tones moderately accentuated. No murmurs.

Blood pressure lower, 150/80. Pulse normal rate and quality.

Peripheral vessels palpable.

Abdomen: No complaints.

Extremities are normal.

On the neurological there was no change whatever. That was the same.

(Testimony of Dr. Dorrell G. Dickerson.)

On the Romberg test, sways in the Romberg position, [57] knees and feet together and eyes closed he swayed.

What does that indicate?

A. That in itself does not indicate anything in particular. You see it in a lot of people. Romberg taken with other things has a lot of significance, but by itself it has no particular significance. You would probably sway in the same test under nervous tension on examination. If one would fall over or pitch violently and quickly, it would have great significance and might mean something rather serious, but simple swaying in the Romberg position might mean weakness, nervous tension; it might mean fatigue. It might be due to any trouble; it might be due to a toxic condition, and if accompanied with other positive signs it takes on greater significance. He had symptoms of *commotio cerebri*. *Commotio cerebri* means a jarring or shaking of the head or brain.

Q. Is that brain concussion?

A. No, it is not concussion, exactly concussion, when you lose consciousness, but when the head is very much shaken, when you get a punch or jolt on the head and it jars you or shakes you, you might be dizzy for a minute but not unconscious. It is a jarring or shaking.

Q. You don't have to have unconsciousness to have concussion, Doctor? A. Yes, you do. I believe the dictionary says and most authorities say that concussion of the brain is a loss [58] of consciousness that follows immediately upon a blow to the head, followed by complete recovery. That is what the dictionary says on that.

(Testimony of Dr. Dorrell G. Dickerson.)

Q. When you examined him on January 9, 1943, was he still temporarily totally disabled?

A. Yes, I said temporarily disabled. Temporary total.

Q. At that time you did not know and would not attempt to make a statement of how long it would be before he would be able to return to work?

A. No; that would depend on quite a few things and what kind of work he could do.

Q. Doctor, I might say that he did return to work in the cannery on July 9th of this year.

A. At the time I saw him I did not think he could go back to work as a fisherman at that time. I haven't seen him since. I don't know.

Mr. Fall: That is all. You may cross examine.

Cross Examination

By Mr. Kappler:

Q. Doctor, in making the neurological examination, you have two types of symptoms to take into consideration, do you not? A. Yes, sir.

Q. Those symptoms are what?

A. Where the patient gives his complaints or subjective complaints, like headache, pain, vertigo, or loss [59] of sense of smell, that would be subjective. Objective is what you see or feel or hear or smell.

Q. In other words, objective signs or symptoms are those which you observe with your own eyes?

A. The special senses, yes.

Q. What objective signs did this man have on the occasion of your first examination?

(Testimony of Dr. Dorrell G. Dickerson.)

A. He had this healed scar on the top of his head. He had this swaying, when I asked him to put his feet together and close his eyes. They were the only two things you could see. Of course, his blood pressure, I took that.

Q. That would be classified as an objective sign?

A. That is objective, yes.

Q. All of his other symptoms were what you would call subjective? A. Yes, they were.

Q. Was the same true with reference to the examination which you made on January 9, 1943?

A. It was.

Q. Had the blood pressure changed any between your examination in August and your examination in January? A. It dropped a little bit.

Q. It dropped a little? A. Yes.

Q. Could the swaying in the Romberg posture at all be [60] attributed to the condition of the blood pressure? A. Yes, it could.

Q. Would you think that an elevated blood pressure in a man 59 years of age would have a bearing, or could have a bearing on the Romberg posture?

A. It is possible with an arteriosclerotic condition of an individual, the Romberg would be positive, and he would sway. You couldn't call it really a positive Romberg. In a Romberg, with an arteriosclerotic condition of the brain or nervous system, a person in middle life, of course the swaying is uncertain, or the equilibrium uncertain because of the condition of the brain.

(Testimony of Dr. Dorrell G. Dickerson.)

Mr. Fall: You say he is 59, counsel. I don't recall any testimony as to the age of the libelant.

Q. By Mr. Kappler: Did the libelant, Doctor, give you his age when you made your examination on August 1st?

A. Yes. I think I have it recorded here. The first time on August 1st he was 59, and the second time he was 59.

Q. When you say the term "sclerotic," you mean what?

A. I examined the brachial arteries by holding the arm up and feeling. You roll your finger, and if they feel hard and stiff, it is what we call palpable. That would indicate that the rest of the arteries in the body are in the same condition.

Q. Was that condition of arteriosclerosis at all [61] referable, Doctor, to trauma?

A. No, that is natural—I won't say natural, but the change occurs in the human anatomy with age and certain conditions. It is a disease—not a disease, but a natural progression of the circulatory system of the human being.

Q. In your examination of this man there wasn't anything to indicate to you that the blow which he received on his head had anything to do with the hardening of the arteries which he had? A. No.

Q. At the time the libelant was admitted to the hospital in San Pedro and his blood pressure was taken there on May 4, as indicated this morning on the chart, it was 160 over 80. Is that an elevated blood pressure, Doctor, for a man of this age?

(Testimony of Dr. Dorrell G. Dickerson.)

Mr. Fall: To which we object as asking for a conclusion and giving the doctor only a portion of what occurred on May 4th. I think the doctor is entitled to know whether it was after the man sustained this severe blow on the head and was in the hospital or when it was. I think the question is indefinite for that reason.

The Court: I think, counsel, it is proper on cross examination for counsel to ask these questions; then on your redirect you can straighten out any error that you [62] think was in the answer. Proceed, counsel.

(Question read by the Reporter.)

A. Yes, I would say that is somewhat elevated.

Q. By Mr. Kappler: When you examined him the blood pressure was what, Doctor, on the first examination?

A. The first time it was 160 over 85.

Q. In other words, it was practically the same as it was on May 4th?

A. From what you tell me, yes. I found it 160 over 85.

Q. And elevated blood pressure is not ordinarily caused by trauma, is it? A. No, it is not.

Q. In your opinion, based upon the facts that you got from this man and based upon the examination you made, do you believe that the elevated blood pressure that this man had was caused by the blow he sustained on the head on May 4, 1942?

A. I don't think the injury had anything to do with his blood pressure being elevated.

Q. Doctor, at the time Mr. Ruljanovich was under the care of the doctors at the United States Public

(Testimony of Dr. Dorrell G. Dickerson.)

Health Service, a blood count was run upon him, which indicated that he had 2,800,000 red blood corpuscles. Would that be indicative of anything to you?

A. Yes.

Q. Would it be indicative of anemia, for example?

[63] A. It is an anemia.

Q. Would that condition be one which would ordinarily be caused by trauma?

A. It depends. If you get a bad hemorrhage—

Mr. Fall: It is stipulated that it would not be.

Mr. Kappler: I accept the stipulation.

Q. Would you say, Doctor, that a man with a blood count of that character was suffering from secondary anemia?

A. It could be secondary anemia, yes, sir. If he had showed no evidence as a result of a great hemorrhage, I would say that it was secondary anemia without question.

Q. If I told you that on November 3rd of this year a blood count was run upon this man, which indicated he had 4,350,000 red cells and his hemoglobin was 78 per cent, would that indicate to you that he was suffering from secondary anemia?

A. That is a mild secondary anemia.

Q. Isn't it true, Doctor, that the presence of a secondary anemia in a man 59 years of age would have an effect on his health and well being?

A. It does.

Q. Wouldn't that be particularly true, Doctor, where this same man also had the sclerotic changes which you have referred to before?

(Testimony of Dr. Dorrell G. Dickerson.)

A. It would affect it for the reason that the blood vessels, if they are thickened or sclerotic, an insufficient [64] amount of blood passes to certain parts of the body, maybe the brain or head or kidneys, but if the blood is not in volume or in quantity delivered to that particular area it might cause symptoms.

Q. You found no evidence, I believe, which indicated this man had sustained a brain injury, did you?

A. No, I reported no organic brain findings. I thought he had suffered commotio of the brain, a jarring, but no loss of consciousness, or no organic changes that I could detect.

Q. Mr. Ruljanovich referred to a grabbing sensation in the area of the place where the wound was on top of his skull, and from the history which you gave a little while ago I take it that he gave you the same statement; is that true?

A. He said he had a grabbing sensation in his head, yes.

Q. Do you have any way of accounting for that, any reason you can think of which would account for that sensation?

A. No, that is one of the things people tell you, which you can't account for. I wouldn't know how to account for it. You have a lot of people who tell you things like that, and have no physical explanation of it.

Q. That sensation, in any event, would be on the surface of the skull?

A. It would be on the surface in the scalp, because [65] you have no feeling in the brain itself.

(Testimony of Dr. Dorrell G. Dickerson.)

Q. It is not indicative of a brain injury, is it?

A. No, you wouldn't experience a symptom like that. That is more of a subjective sensation from the scalp rather than from the inside.

Q. In other words, where you experience a brain injury from a blow, you have very definite signs that go along with that injury, don't you? For example, you have exaggerated reflexes; perhaps they might be exaggerated; they may be slight; they may be equal on one side and greater on the other? You might have failure of function of some part of the body?

A. Usually in the place where he was hurt. I don't think he had a brain injury, any organic brain injury that I could find.

Mr. Kappler: That is all.

Redirect Examination

By Mr. Fall:

Q. You did find his disability as a result of your general diagnosis? A. Yes, I did.

Q. The fact that he may have had a blow at one portion of the skull does not mean necessarily he is going to have an injury to the brain, an injury under that portion? He may have an injury by a contra coup?

A. That is possible, in certain injuries, certain [66] types of force that are direct, but unless it is a force directed from above, if you have a *countra* coup injury, it would be basal, and in all probability would kill the patient right then and there. Many times you strike the right side of the head and rupture a blood vessel on the left side, or vice versa, but I think if you get a

(Testimony of Dr. Dorrell G. Dickerson.)

blow on the top of the head sufficiently great to cause contra coup to the base, it would probably kill you, because there are so many vital structures there. I don't think that would be applicable here. I don't think he had sufficient force to injure his brain. That is my opinion.

Q. He told you that he was not knocked unconscious?
A. Yes, sir, he did.

Q. Did he tell you he was quite hazy for a period of time after he was hurt?

A. No. He told me that he was knocked down, but did not lose consciousness, and he was taken to the San Pedro Hospital and was there seven days.

Q. He did not tell you anything about being taken to another doctor's office in the interim?

A. No, he did not. He said he was taken to the San Pedro Hospital, was there seven days, and was treated by physicians in the United States Marine Hospital service.

Q. He didn't tell you he was taken to Dr. Steller's office in Wilmington and there X-rays were taken, and that [67] the laceration was sutured at Dr. Steller's office?

A. He may have told me that but I haven't it in the record. I am not saying he didn't. I have here that he had a wound that was sutured.

Q. A blood count of 4,350,000 is within normal range, isn't it?
A. Four million?

Q. 4,350,000?
A. No, that is a little low.

(Testimony of Dr. Dorrell G. Dickerson.)

Q. You would say 4,500,000 would be within normal?

A. I would say it ought to be closer to 5,000,000.

Q. Four and a half million to five million?

A. Yes.

Q. The main thing was the hemoglobin. The hemoglobin percentage was within normal limits?

A. No, it was low. 70 per cent was low. It ought to be higher; say 300,000.

Mr. Kappler: I think, counsel, it was 76.

A. I thought he said 70.

The Court: 76.

Mr. Kappler: He said 78.

A. I thought he said 70.

Q. By Mr. Fall: There was a history of 70 per cent some time previous, Doctor, but I think on November of last year—no, November of this year it was 4,350,000, and with a 78 per cent hemoglobin. [68]

A. I misunderstood the figures. I might say in this particular part of the United States that would be considered normal, but it is not a healthy hemoglobin for everyone. The individual ought to be up to 80 or 90, but in California everyone has got secondary anemia, so I would say it would be normal for this part of the country.

Mr. Kappler: Are we weaklings out here, Doctor?

A. I think we do get a little soft, men especially.

Q. By Mr. Fall: Doctor, the vessels of the eye—what is it, fundi? A. The fundal vessels.

Q. Those vessels were normal?

A. Yes, they were normal.

(Testimony of Dr. Dorrell G. Dickerson.)

Q. In arteriosclerosis you usually find those vessels involved first, don't you?

A. Usually, but not always. It is usual, when you look into a man's eye, who has arteriosclerosis, you see a change; the retina is altered but not necessarily. There are cases where it is not present.

Q. You did not find it here?

A. No, I did not.

Q. So you don't know to what extent this condition of hardening of the arteries has gone?

A. You can only recognize that it is more or less general, but it isn't in the fundal vessels that I can see.

Mr. Fall: that is all. [69]

CLARK B. WALSWORTH,

called as a witness on behalf of the Libelant, being duly sworn, was examined and testified as follows:

The Clerk: Your full name, Doctor?

The Witness: Clark B. Walsworth.

Direct Examination

By Mr. Fall:

Q. Dr. Walsworth, what medical school are you a graduate of?

A. I graduated from the Los Angeles College of Osteopathic Physicians and Surgeons.

Q. What year? A. 1933.

Q. You have been practicing where since?

A. In San Pedro.

Q. What type of practice do you have?

A. General practice.

(Testimony of Clark B. Walsforth.)

Q. In the course of your practice did you have occasion to treat Mr. Ruljanovich? A. I have.

Q. When did you first see him, Doctor?

A. On the 9th of February, 1943.

Q. At that time did you make an examination of him? A. I did.

Q. What were your findings at that time?

A. As far as objective findings themselves, there [70] was very little found. The man had a laceration, an old scar on the skull, on the vertex of the skull, but other than that the essential findings were negative. His blood pressure at the time of the examination and repeated checks that day averaged around 125 over 80.

Q. How many times did you check it that day, if you recall?

A. I can't say definitely on that, but several times.

Q. On various occasions subsequently have you checked his blood pressure?

A. Every time the man has been in the blood pressure has been checked.

Q. About how many times have you seen him?

A. I believe ten times, on my history here.

Q. What is the highest blood pressure you found at any time?

A. The highest that I found at any time was 140 over 80.

Q. When was that? A. The 5th of March.

Q. Mr. Ruljanovich is a Yugoslav, as you know.

A. That is right.

(Testimony of Clark B. Walsforth.)

Q. Have you had occasion in your practice to examine a number of Yugoslavs in San Pedro?

A. I have.

Q. There are quite a few people in this country of that descent living in San Pedro? [71]

A. That is right.

Q. Have you found anything in reference to that in reference to taking their blood pressure, that you don't find ordinarily with other people?

A. They usually have a fear of it to some extent. At times it almost develops into a phobia. Many times I have seen them when you first examine them have a very high blood pressure, and then after talking with them and diverting their attention to other things, after a few minutes the blood pressure will drop quite markedly; and I find the more you become acquainted with the patient and he knows me that the blood pressure in the majority of cases will drop.

Q. As a matter of fact, they don't actually have high blood pressure?

A. It appears to be a fear of the blood pressure itself.

Q. Would you say that the red corpuscle count of 4,350,000, with a 78 per cent hemoglobin, in Mr. Ruljanovich, would be within his normal limits for his age?

A. It would be within normal limits of his age; possibly on the lower border of normal limits.

Q. Doctor, I think there is sufficient in the evidence to show that when he was in the hospital in May, 1942, he had a blood count of 2,800,000 and 70 per cent hemoglobin, at that time. That is definitely low? [72]

A. That is right.

(Testimony of Clark B. Walsforth.)

Q. Would you say at that time he was suffering from anemia? A. That is right.

Q. At the present time, Doctor, with a blood count of 4,350,000 and a 78 per cent hemoglobin, would you say he was suffering from anemia?

A. From a low grade secondary anemia, Mr. Fall. May I explain that in this respect? If we have to figure everything which is absolutely not within the so-called laboratory figures, it would have to be considered then as a secondary anemia. It may be one per cent or a small percentage over, but nevertheless, if you have to have something as a basis, it would be a low grade anemia.

Q. Would you expect him to have headache as a result of an anemia of that low grade?

A. With a blood count—

Q. Of 4,350,000? A. I would not.

Q. With a 78 per cent hemoglobin?

A. I would not.

Q. What were Mr. Ruljanovich's complaints when he first came to you?

A. He was complaining of a peculiar sensation of his scalp. He did not mention scalp exactly, or his head; it seemed to be a crawling on the outer surface of the skull. [73] He was complaining at the time of light headedness. He was complaining of pain in his neck.

Q. Did you prescribe anything for him after your examination? A. I did.

Q. What did you prescribe for him?

A. I prescribed two things; a preparation of prostigmine bromide, one tablet three times a day; then probably a tonic.

(Testimony of Clark B. Walsforth.)

Q. During the time that you saw him did you prescribe anything else or give him anything else?

A. In November of this year I recommended a general check-up and he was given at that time some elixir of caffeine, which is an iron liver tonic.

Q. During the time you saw him, from the period of February of this year in July, was there any improvement?

A. He was able to return to work in July. He hasn't recovered entirely but he has improved.

Q. He did improve sufficiently to return to work?

A. That is right.

Q. Had his complaints of light headedness cleared up? A. No.

Q. This condition you describe of his complaints, you have a history of his being in an accident?

A. That is right.

Q. In May, 1942; that he was in the hospital at San [74] Pedro for about one week?

A. That is right.

Q. And that the cause of his disability at the time was that a timber had fallen on his head, causing a laceration; that he was afterwards taken to the hospital. In your opinion was the condition which you found him complaining of the result of this accident?

A. In my opinion it would be possible for it to be, yes.

Q. Possible or would it be probable, or would it just be in the realm of possibility?

A. I would say it would be quite probable for it to be.

Mr. Fall: You may cross examine.

(Testimony of Clark B. Walsforth.)

Cross Examination

By Mr. Kappler:

Q. May I see your records, Doctor, please?

Mr. Fall: May I ask him a couple of questions on these bills, as to their reasonableness?

The Court: Proceed.

Q. By Mr. Fall: Doctor, I understand that Mr. Ruljanovich has paid \$28.00 to you. Is that a reasonable sum for the services that you have rendered?

A. I believe so.

Q. And Mr. Ruljanovich went to Dr. Cassidy on four different occasions. He was charged three bills at \$2.00 apiece and one bill at \$1.50. Would that be a reasonable [75] charge for an office call?

A. I would say it would be, yes. I don't know what was done.

Q. Well, he went to him and he examined him for this condition, and he was told to return; I don't know whether it was for observation. There is some evidence here that there were certain prescriptions given to him.

A. Yes, I think that they are reasonable.

Mr. Fall: Counsel, will you stipulate that Dr. Dunbar's bill, amounting to \$13.00, for five calls, would be reasonable?

Mr. Kappler: Yes; that is subject, of course, to the same objection.

The Court: Yes.

Mr. Kappler: I will stipulate to the reasonableness.

The Court: All right.

(Testimony of Clark B. Walsforth.)

Q. By Mr. Kappler: Doctor, as I understand your testimony, the figure they gave of Dr. Dickerson, which was in turn given to you by Mr. Fall, of 4,350,000 red blood cells, would indicate a mild secondary anemia; is that right? A. Yes, that is right.

Q. Let me ask you this: What would the figure of 3,680,000 red blood cells indicate to you?

A. That would be a lower grade of secondary anemia.

Q. That would be even lower? [76] A. Yes.

Q. Isn't it true that on November 5 of this year you had a blood count performed on Mr. Ruljanovich and at that time he had a red blood count of 3,680,000?

A. I have the record there. I don't remember the date. Yes.

Q. Isn't it also true that on December 14 this year you had another count run, which indicated he had 3,800,000 red blood cells? A. That is right.

Q. Both of those figures are lower than the normal limits, aren't they, Doctor? A. That is right.

Q. Wouldn't you say that a hemoglobin count of 76 per cent was a little low?

A. Possibly a little low.

Q. As I understand it, from your records, this patient was referred to you by Mr. Fall?

A. That is right.

Q. What would you consider to be the normal blood pressure of this man, 59 years old?

A. The present conception of blood pressure would be between 130 and 140.

(Testimony of Clark B. Walsforth.)

Q. You say that the highest this man ever recorded for you was 140 over 80?

A. I notice one place 145. Then it dropped to 140.
[77] That was one time only.

Q. Would you consider 140 high for this man?

A. No.

Q. In other words, would you consider 140 to be a normal blood pressure?

A. It is generally considered to be a normal blood pressure, within normal ranges.

Q. It was 140 the very first occasion you ever took it, wasn't it? A. No.

Q. It was 125 over 80? A. Yes.

Q. Why did you then undertake to run three or four blood tests on the same day?

A. Because he was as amazed about it as I was. The man had told me he had been repeatedly checked and had been told he had high blood pressure, and I was as surprised as he was.

Q. I notice you prescribed biferin.

A. Biferin.

Q. That is an iron preparation?

A. Yes, put out by Lederle; iron and liver.

Q. That was to raise the hemoglobin?

A. That was to raise the hemoglobin and the red blood cells.

Q. And the red blood cells? [78]

A. That is right.

Q. This elixir that you testified about—

A. That was the same type of preparation.

(Testimony of Clark B. Walsforth.)

Q. The same type of preparation?

A. That is right.

Q. You prescribed vitamin B complex, didn't you?

A. Yes, I did; I notice that.

Q. That of course is something that builds a person up generally, isn't it?

A. That is true. At this time it is being found very useful in the treatment for neuritis and nervous involvements, such as Mr. Ruljanovich was complaining of.

Q. You didn't give to this man any

A. No, sir, I have never given it to him.

Q. What did you give him for the relief of his headache?

A. Mr. Ruljanovich was not complaining, as I interpret it, of a real headache. It was more, it seemed, a disturbance of the scalp, on the surface covering of the scalp.

Q. In other words, he complained of having a feeling that the scalp was crawling?

A. I believe so.

Q. He wasn't complaining of headache as such?

A. Not as such.

Q. What did you give him for dizziness?

A. I used prostigmine bromide; which is prescribed and [79] used for concussion cases at the present time.

Q. Did you prescribe that for him on the occasion of his first visit? A. Yes.

Q. How long did he continue to take prostigmine bromide? A. He should still be taking it.

(Testimony of Clark B. Walsforth.)

Q. Did you give him more than one prescription?

A. No, it is to be refilled.

Q. It can be refilled? A. Yes.

Q. You instructed him that it could be refilled?

A. I talked to him about it, yes.

Q. To your knowledge has he been taking prostigmine bromide? A. I don't know recently.

Q. Unicap, what is that for?

A. It is purely a vitamin preparation for tonic.

Q. You say under the heading "Cardio respiratory: Vessels palpable." What do you mean by that, Doctor?

A. Certain vessels on examination are not collapsible; they are more easily felt than others.

Q. You didn't find any evidence of any swaying in the Romberg posture, did you?

A. The Romberg was negative.

Q. Would you say from your examination that this man [80] had a moderate generalized arteriosclerosis?

A. I don't believe so.

Q. It would be your opinion that he had none at all?

A. No, I believe that he possibly has some; it would be commensurate with a man of his age; but it is very slight, if it is.

Q. In other words, you feel he has a normal sclerosis?

A. I feel that he has the normal change of a man of his age.

Q. Whatever change there is in that regard, would not be associated with any blow on his head?

A. Will you repeat that please?

(Testimony of Clark B. Walsforth.)

(Question read by the reporter.)

A. That is right.

Q. Did you perform upon this man a neurological examination?

A. Yes, such as is able to be done in general practice.

Q. Did you test him to see if he had any Babinski?

A. I did.

Q. What was it? A. Negative.

Q. Did you examine him with the ophthalmoscope?

A. I did.

Q. What did that reveal, if anything?

A. Nothing.

Q. Was there any evidence of nystagmus? [81]

A. No.

Q. What is nystagmus?

A. Nystagmus is either the side to side or vertical movement of the eyes when attempting to follow an object along a given path.

Mr. Kappler: That is all.

Mr. Fall: I have no further questions.

NEAL D. GIBSON,

called as a witness on behalf of the Libelant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Neal D. Gibson.

Direct Examination

By Mr. Fall:

Q. Mr. Gibson, by whom are you employed?

A. The Crescent Warehouse Company.

(Testimony of Neal D. Gibson.)

Q. The Crescent Wharf & Warehouse, or Crescent Warehouse?

A. I am really employed by the Crescent Warehouse Company. It is a branch of the Crescent Wharf and Warehouse.

Q. That is on Terminal Island?

A. That is right.

Q. On May 4, 1942, were you at the warehouse when Mr. Ruljanovich received an injury?

A. I was.

Q. Shortly before this were you in the office of the [82] Crescent Warehouse Company?

A. Yes, sir.

Q. What was the occasion of your going to the warehouse?

A. I go to the warehouse during business hours every day. I am employed there.

Q. On this particular occasion you went out to the warehouse just before Mr. Ruljanovich received an injury?

A. I went to that part of the warehouse.

Q. What part of the warehouse was it?

Q. There is another door than the main entrance about, oh, maybe 70 or 80 feet from the main entrance, another door.

Q. What was the occasion of your going down there?

A. Because the office informed me that this sardine fish net was to be picked up and delivered.

Q. Where did you go; to the door inside the warehouse or outside?

A. On the inside.

(Testimony of Neal D. Gibson.)

Q. When you got to the door what did you do?

A. I opened the door.

Q. Was there a truck outside then?

A. At that time the truck swung around there, and started backing in, just as soon as I got the door open.

Q. Were there any men there that came in the warehouse?

A. Yes, some of the men followed me around through the inside entrance, and I think some came from the outside [83] when I opened the door.

Q. As the truck was backing in, whereabouts were you?

A. As quick as I opened the door and I stood there a minute or so, he backed in crooked, so I stepped up on the platform, jumped on the truck, and helped the driver, to assist him.

Q. Where was the net with reference to the door of the warehouse, that is, facing the door from the outside, was it to his right or to his left?

A. It was to the right, directly against the front wall, and to the right of the ramp.

Q. Where the truck would come in there is a ramp?

A. That is right.

Q. Did you notice a man attempt to, or did a man get on the truck as it was backing in the warehouse?

A. No, the truck backed in sort of crooked, and I got up on the truck to assist him, and when the truck started forward, then another man jumped on the truck.

Q. Do you know who that man was?

A. He was just one of the crew that came there, that is all I know.

(Testimony of Neal D. Gibson.)

Q. What, if anything, happened when he got up on the truck?

A. When he got up on the truck the timber started falling, and of course I hollered. [84]

Q. Where was the timber standing immediately before he tried to get on the truck?

A. It was standing just beside the door.

Q. On what side of the door, as you faced it from the outside?

A. It would be just to the right of the entrance behind the door track.

Q. That door is a door sliding up and down, is it?

A. That is right.

Q. And it rolls up to the top of the door into a roll?

A. That is right.

Q. The 4 by 4 was immediately beyond—

Mr. Kappler: I will object to that as leading.

Mr. Fall: I will withdraw the question. I am sorry.

Q. Where was the 4 by 4 with reference to the edge of the track?

A. Standing between the track and another 4 by 4 that was stationary there.

Q. How far from the track was this 4 by 4 that was stationary?

A. Well, I would say that part of the track, probably at the top of the 4 by 4, was probably touching the track.

Q. There was a 4 by 4, you say, that was stationary?

A. Yes, sir.

(Testimony of Neal D. Gibson.)

Q. How far from the track was that 4 by 4?

A. Just a matter of a few inches; I would say about [85] 3 inches.

Q. Was the 4 by 4 leaning up against the wall; is that correct?

A. Yes, sir.

Q. It wasn't stationary. And how far from the bottom of the wall was the bottom of that 4 by 4?

A. I would say about a foot and a half.

Q. How long was that 4 by 4, if you know?

A. Somewhere between 15 and 18 feet.

Q. When this man got up on the truck what, if anything, did he do with his left hand?

A. With his left hand he sort of assisted himself by taking hold of this 4 by 4.

Q. What happened to the 4 by 4 then?

A. He immediately pulled on it, setting it in motion, and it fell over.

Q. Which way did it fall from the wall? It was leaning against the wall?

A. That is right.

Q. Which way did it fall from the wall?

A. It fell directly opposite of the wall.

Q. So if this pencil were the 4 by 4, it was pulled out away from the wall?

A. Yes, sir.

Q. What happened to that 4 by 4 then?

A. Well, it hit this man on the head. [86]

Q. What happened to him then?

A. He was immediately assisted by a couple of his companions and someone took out a handkerchief and put it on top of his head to absorb some of the blood. He was sort of down in a crouched position, but he was assisted by these men and taken out to the car.

(Testimony of Neal D. Gibson.)

Q. At that time did he talk at all?

A. No, he just sort of murmured, I would say.

Q. Do you see any man in the courtroom that was the individual that got on the truck and pulled this 4 by 4 away from the wall?

A. I wouldn't recognize him, no, sir.

Q. After this man left in the automobile, was the net put on the truck?

Mr. Kappler: That is objected to as being immaterial, your Honor. It occurred after the accident, and has nothing to do with this case.

Mr. Fall: That net was taken over to the boat.

The Court: I think, counsel, for instance, after the accident, if the man had gotten up and walked away, that would be an element.

Mr. Kappler: That is true; but he is now asking him about what happened after Mr. Ruljanovich was taken away.

Mr. Fall: I am referring to the net. Was the net taken on the truck?

Mr. Kappler: I will stipulate that it was. [87]

Mr. Fall: I want to show that the net was actually taken away and put on the "Betsy Ross."

The Court: Counsel has settled that for you.

Mr. Fall: You may cross examine.

Cross Examination

By Mr. Kappler:

Q. How long have you been employed at the Crescent Warehouse Company?

A. Around ten years.

(Testimony of Neal D. Gibson.)

Q. What capacity do you have down there?

A. Warehouse foreman.

Q. In other words, you were in charge of the whole warehouse down there, weren't you?

A. That is right.

Q. Mr. Cekalovich, Mr. Muljat and Mr. Mratinich, owners of the "Betsy Ross," had rented space from the Crescent Warehouse Company, wherein they could store their net, didn't they?

A. Yes, sir.

Q. How long had they had their net stored there prior to May 4, do you know?

A. No, I don't have anything to do with the office records.

Q. Do you know approximately how long it was there?

A. No; there are so many fish nets, I don't recollect just how long they do stay there. [88]

Q. When was the loose 4 by 4 you are talking about, that was 16 to 18 feet in length, placed against the wall of the building?

A. Well, I would say a month or longer before the accident happened.

Q. In other words, this loose timber was allowed to remain there for about a month before this accident?

A. Yes, sir.

Q. Would you say that that timber was about as high as this standard on which the flag is raised?

A. Maybe a little longer.

Q. Maybe a little longer than that, and it was leaning up against the wall of the building so that the foot, the base of the timber, was about a foot and a half out from the wall?

A. That is right.

(Testimony of Neal D. Gibson.)

Q. I have here three photographs—

The Court: If you are going to show the witness those, you had better have them marked for identification, just so we know what you are discussing.

Mr. Kappler: All right.

Mr. Fall: I have no objection to all of them going into evidence. They may go in at this time without laying the foundation.

Mr. Kappler: All right.

The Clerk: They will be Respondent's and Claimant's [89] Exhibits B, C and D, respectively, in evidence.

Q. By Mr. Kappler: I have here, Mr. Gibson, three photographs which were taken, I am told, very shortly after this accident occurred. The fishing net, of course, has been removed from the dock, which is just to the right of the ramp as you enter the building. Exhibit D is a true and accurate representation of the condition of the premises there at the time of the accident, with the exception that it does not, of course, portray the net which had been stored there, and with the further exception that it does not portray any loose 4 by 4 timber; is that true? A. That is right.

Q. Would you like to see them (to counsel)? Mr. Gibson, will you point out to me where this loose 4 by 4 timber, 16 or 18 feet in length, was standing?

A. This is the track that the door runs up and down on.

Q. Let us make a mark there. When you say this is the track that the door runs on—

A. That is right.

(Testimony of Neal D. Gibson.)

Q. We will mark that "N.G." your Honor.

The Court: Just mark it A.

Q. By Mr. Kappler: This being the stationary beam referred to, the stationary 4 by 4?

A. That is right.

Mr. Kappler: May we mark that B, your Honor?

The Court: Yes. [90]

Q. By Mr. Kappler: That beam was fixed in position and was there all the time, is that right; at least it was there at the time of the accident? A. Yes.

Q. It was affixed at the top and bottom in some manner?

A. That is right, it is fixed there permanently.

Q. Let me ask you this: Is there any space or area between the back of this beam and the edge of the wall?

A. No, it is supposed to be practically as close as you can put it.

Q. Will you draw a little cross to indicate the place on the ramp where the base of this 4 by 4 was?

A. It was right against this ramp; a foot and a half from the wall. It would be right against there.

Q. Let us mark that C, please, where the base of the 4 by 4 was located. As I understand it, the 4 by 4 then extended from this point up to the point on the wall, is that correct? A. That is correct.

Q. Was there anything to hold the top of the 4 by 4 to the wall? A. Just gravity.

Q. Just gravity. There was no nail or any other device to hold it there? A. No, sir.

(Testimony of Neal D. Gibson.)

Q. Was the side of this 4 by 4 up against the edge of [91] the concrete ramp, or the dock ramp?

A. Yes, it was right up against it.

Q. So that the 4 by 4 was located in the space which appears between the edge of the concrete dock and the edge of the place where the door rolls up and down?

A. I would say there was about four inches or so in between there, that extended up in. This track would be about 4 to 6 inches wide; then this concrete pillar would extend on out there about another 6 inches. I would say it was about a foot over from the driveway.

Q. As you look at this track which is marked A, there would then be a space in between the edge of the track and the edge of the concrete, which was approximately 4 inches wide, is that correct? A. Yes.

Q. In other words, it is shown better perhaps in Exhibit B? A. Yes.

Q. The area in here is approximately 4 inches?

A. Yes, four or five inches.

The Court: I think it is just as clear on the other exhibit, counsel.

Mr. Kappler: I think it is.

The Court: I wouldn't mark another one; it would confuse the record.

Mr. Kappler: That is marked D, that space between the [92] concrete and the edge of the space where the door rolls up and down, approximately four to five inches in width.

Q. Where was the rear of the truck when you jumped up on it?

(Testimony of Neal D. Gibson.)

A. I imagine the rear left side would probably be right around here.

Q. E represents the place where the rear of the truck was at the time the witness jumped up on the bed of the truck. That, Mr. Gibson, was a flat bed truck, was it?

A. Yes; a flat bed, semi-truck.

Q. What was the distance from the service ramp to the top of the concrete dock?

A. About two feet and a half.

Q. That refers to the highest edge near the door?

A. Yes.

Mr. Kappler: I will mark that here.

Q. How high would you say it was up here at the other end; about two feet?

A. Well, what do you mean by the other end? I think they are about 6-inch boards there, planks on the concrete. I imagine here would be one foot. The top of the ramp comes up directly from the floor level.

Q. Where were you standing when you jumped up onto the bed of the truck?

A. I walked up along here, with one hand on the net. I would say I jumped up onto the truck— [93]

Q. Right here?

A. Yes.

Q. This point F-1?

A. Yes.

Q. When you jumped up onto the bed of the truck, how much distance was there from the top of the concrete on which you had your foot and the bed of the truck? What was the distance above?

A. About a foot and a half or two feet.

Q. As I understand it, after you jumped up onto the truck the truck proceeded on out farther into the driveway and then backed up in again, is that correct?

A. No, he was going out to back up again.

(Testimony of Neal D. Gibson.)

Q. He was going out to back up again?

A. Yes.

Q. Did the fisherman jump onto the truck while the driver was on his way back in?

A. No, just practically at the time he started pulling out to straighten out.

Q. At that time where were you on the body of the truck?

A. I was up pretty well to the front end, where I told the driver to pull up and get over.

Q. Were you facing toward the net or were you facing toward the cab?

A. I was facing toward the net. [94]

Q. You were looking right at the man who jumped up onto the truck, weren't you? A. Yes.

Q. As you saw him there, as I understand it, you saw him reach out and put his hand on this four by four? A. Right.

The Court: Was that the libelant?

Mr. Kappler: No, your Honor; one of the other members of the crew.

The Court: That was some other member?

Mr. Kappler: That is correct.

Q. While you were up on that truck you saw this other man reach over in an effort to get on the truck, and put his hands on the 4 by 4?

A. That is right.

Q. You saw him pull that 4 by 4 as he got up on the truck?

A. I saw the 4 by 4 move. I couldn't see him, as to any pulling, but I saw the 4 by 4 move when he did it.

(Testimony of Neal D. Gibson.)

Q. Prior to the time he jumped up onto the truck you saw he was pretty close to the end of the concrete dock there, didn't you? A. Yes, sir.

Q. Did you yell out a warning to anybody?

A. I yelled, "Look out!"

Q. Did you warn this crew member before he attempted [95] to get up onto the truck, that there was a loose 4 by 4 standing there right next to this member that allows the sliding door to go up and down?

A. No, sir; I did not think he had no business on there until the truck was ready for him to put on the net.

Q. In other words, you never at any time warned anyone of the fact that this timber was not fastened in the right manner?

A. No, sir, I did not have time to.

Q. You made no attempt to move this timber prior to the time that an effort was made to get the net out of there? A. I did not have time.

Q. You made no effort to move the timber prior to the time you opened the door, did you?

A. The truck began moving in immediately, and I proceeded to help him back the truck in.

Q. The truck did not start to move up until after you opened the door, did it?

A. Right directly afterwards.

Q. Before you opened the door, of course, the truck was on the outside, and you made no effort at that time to attempt to move this 4 by 4 timber, did you?

A. No, sir; it was dark in there; I couldn't even see it, in fact.

(Testimony of Neal D. Gibson.)

Q. You couldn't even see it? [96]

A. Not very plain.

Q. Despite the fact, however, that you knew it had been there a considerable period of time?

A. It had been there so long that I had forgot about it.

Q. Did you have occasion to observe the surface of the ramp after the fall of the 4 by 4 timber, in the immediate area where the base of the 4 by 4 had been resting prior to falling?

A. I don't know as I exactly get what you mean.

Q. Isn't it a fact that you and police officer Bonk and several other persons examining the ramp at the place where the base of the 4 by 4 had been prior to the time it fell?

A. Yes, it has been there so long it had made a print in the asphalt, you might say.

Q. Let me ask you this, Mr. Gibson: Will you examine Respondent's Exhibit B and tell me whether or not this area that I am now pointing to is not the area that you observed after the timber fell, and which apparently represents a mark in the surface of the ramp left by the timber?

A. It looks like that might be, to me.

Mr. Kappler: I would like to mark that, your Honor, G on Exhibit B.

The Court: You are referring to the white area that is a little bit lighter than the rest of the area? [97]

Mr. Kappler: That is correct. (Q) So that the court may know what the situation was, how high was the net piled up there on this dock?

(Testimony of Neal D. Gibson.)

A. I would say about 5 to 6 feet, between there.

Q. In other words, it was up 5 or 6 feet in the air, but this timber, however, was up considerably higher than the net? A. Yes.

Q. The only thing I am not clear about, Mr. Gibson, is this: You claim that this seaman pulled the board away from the wall, or he leaned on it in an effort to get onto the truck?

A. He sort of pulled on it, the same as you would when you are walking on an incline or anything like that, to jump up on something higher.

Q. Being 16 or 18 feet in length, this board did not have much of an angle to it, did it?

A. About the regular angle, the same as lumber is piled.

Mr. Kappler: I think that is all.

Redirect Examination

By Mr. Fall:

Q. Mr. Gibson, the space on Exhibit D that has planking laid down on the floor of the warehouse, is that the area on which the net was lying?

A. That is right.

Mr. Fall: I have no further questions. [98]

Q. By the Court: Did you see the timber fall?

A. That is right.

Q. Did you see who it hit? A. Yes.

Q. Who did it hit?

A. This Steve Ruljanovich.

Q. Where was he standing?

(Testimony of Neal D. Gibson.)

A. Well, on this here, he would be behind the truck; as the truck went to pull up he started to go over into this area in here.

Q. He stepped up there?

A. Yes, he went to step up there to go in behind that.

Q. By Mr. Fall: That would be just about here?

A. Yes.

Q. At the point marked H, which indicates about the point that Mr. Ruljanovich was?

The Court: That was on the ramp?

Mr. Fall: On the ramp; that is H, on Exhibit D.

Q. By Mr. Kappler: Was he on the ramp or on the dock?

A. He went to walk, step up on there, up on the floor level.

Q. How long an interval elapsed between the time that this seaman put his hand on this 4 by 4 and the time that the beam fell over and struck this man on the head? A. Just a matter of a few seconds. [99]

Q. What light did you have in the warehouse?

A. There were skylights in that part of the building; then with the door open, he was right next to the door; plenty of light.

Q. In other words, as you looked out the door, of course, you would see outside light; is that it?

A. It was all open out there, if that is what you mean.

Q. Was the sun shining that day?

A. I don't know.

Mr. Kappler: That is all.

GEORGE ZITKO,

called as a witness on behalf of the libelant, being first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: George Zitko.

Direct Examination

By Mr. Fall:

Q. Mr. Zitko, were you a member of the crew of the "Betsy Ross" at the time Mr. Ruljanovich was injured? A. Yes.

Q. Were you one of the men that went over to the Crescent Warehouse to get the net, the morning that he was injured? A. Yes, sir.

Q. After the door was opened to the warehouse, and [100] about the time the truck started to back in, where were you standing, or where were you?

A. I was outside the door of the warehouse.

Q. Then did you come inside the warehouse?

A. No.

Q. Were you outside the warehouse when Mr. Ruljanovich was injured?

A. Well, yes, I was that time outside too.

Q. Were you near the doorway?

A. Yes, right in the corner.

Q. When you refer to the corner, if you will look at Respondent's Exhibit C, which corner of the door were you standing near? A. This is it.

Q. That is looking outside?

A. Outside, in the warehouse.

Q. Yes.

A. I was right here. I was eating a sandwich.

(Testimony of George Zitko.)

Q. Were you outside the door?

A. Right here, on the corner.

Q. On the corner, but outside? A. Outside.

Q. Did you see this timber falling?

A. Yes, sir.

Q. Just about that time or just before, did you see one of the members of the crew get on the— [101]

Mr. Kappler: I object to that as being leading, Your Honor, and suggestive.

Mr. Fall: I think it is.

Q. Did you see anyone get on the truck?

A. No, I saw one on the net.

Q. One on the net? A. I think on the net.

Q. Who was that? A. Frank Muljat.

Q. Did he get on the truck?

A. Well, I didn't see him on the truck. Just before the truck was going in, he was on the net.

Q. He was on the net before the truck went in?

A. Yes: then when the truck was going back and forth, I have no chance to see if he was on the net or not.

Q. Did you see the timber falling?

A. Yes, I have a chance, because there wasn't even half the truck inside.

Q. After it fell did you hear any conversation with reference to the timber falling or what caused it to fall?

A. Well, afterwards, when I grabbed Mr. Ruljanovich—four of us was there; Frank and Caruso, myself—five all together.

Q. Frank is Frank Muljat?

(Testimony of George Zitko.)

A. Yes; he was there too. Then afterwards I heard that he touched the 4 by 4— [102]

Q. Just a minute.

The Court: Yes, it may go out.

A. But I didn't see him touch—

The Court: That is all right; you have answered.

Q. By Mr. Fall: Did Mr. Muljat make any statement, or say what caused the 4 by 4 to go over?

A. No, not what I know.

Q. You went over, did you, and helped pick up Mr. Ruljanovich?

A. Well, they brought him outside at that time, and I helped them guys, because I was next to him.

Q. When they brought him outside was Mr. Ruljanovich conscious? A. At that time, yes.

Q. Did you talk with him?

A. Afterwards, you know; I couldn't say, ten or fifteen minutes.

Q. Did you try to talk with him before the ten or fifteen minutes?

A. I did. He just was crying. I did ask him a question, but he didn't answer me at that time.

Q. He didn't answer you?

A. No, he was crying, and kind of moaning.

Q. Were you in the automobile that went over to Wilmington? A. Yes, sir. [103]

Q. Did he walk to the automobile?

A. No. We grabbed him, then a fellow opened the door and we stuck him inside on the seat.

Q. After you got to Wilmington, did he walk from the automobile up to the doctor's office?

A. We were three of us, me and Mr. Muljat and Mr. Cekalovich. Mr. Cekalovich put one arm on our

(Testimony of George Zitko.)

neck, on each side, helping, underneath his arms, to carry him inside.

Q. At the doctor's office, did you stay there when the stitches were taken? A. Yes, sir.

Q. Were you in the room when the stitches were taken? A. I was right there.

Q. What did the doctor do just before he put the stitches in his head?

A. First the nurse came. She shaved him all around. He was down on the knees on the table; then the doctor came, and I believe the nurse took the X-ray; the nurse, she took an X-ray, and then he was like that, I believe, for fifteen minutes, maybe more; I couldn't say; then the doctor, afterwards when he saw the picture, he started to work on him, to make the stitches.

Q. Did you stay there until he was taken away to San Pedro? A. Yes.

Q. How did they take him [104]

A. In an ambulance.

Mr. Fall: That is all.

Mr. Kappler: No questions.

PETER CEKALOVICH,

called as a witness on behalf of the libelant, being first duly sworn, was examined and testified as follows:

The Clerk: What is your full name?

The Witness: Peter Cekalovich.

Direct Examination

By Mr. Fall:

Q. I am calling this witness under Section 2055 of the Code of Civil Procedure.

(Testimony of Peter Cekalovich.)

Mr. Cekalovich, are you the master of the "Betsy Ross"? A. Yes.

Q. Were you the master of the "Betsy Ross" on May 3 or May 4, 1942? A. Yes.

Q. You have continuously been the master since that time? A. Yes.

Q. And some time prior thereto?

A. Not continuously, because I was sick for a while, and Frank was the master for a few days, but I was continuously almost, but a few days.

Q. That is Frank Muljat? [105]

A. Yes.

Q. He was also one of the owners of the boat?

A. Yes.

Q. You are one of the owners?

A. That is right.

Q. Mr. Mratinich was also one of the owners?

A. That is right.

Q. On the 3rd day of May did you have any conversation with Mr. Ruljanovich with reference to his being employed as a member of the crew of the "Betsy Ross"? A. Yes, I did.

Q. What did you say to him and what did he say to you?

A. I need the man to go fishing with me. I asked him if he wanted to go fishing with me.

Q. What did he say?

A. Well, he said he was kind of thinking whether to go or not, because I asked him several times before to come fishing. He said, "Well, I think I would come,

(Testimony of Peter Cekalovich.)

if you keep me on for sardines," because he figured the tuna season was not so very good, and that is why he wants to be on the sardines.

Q. What did you tell him?

A. I told him I never quit anybody that is good on the boat. He could continue to fish with me, if he was willing to come.

Q. Did you tell him he could fish then for both the [106] tuna and the sardines? A. Yes.

Q. Then on the next day did he go down to the boat? A. Yes; I took him down in my car.

Q. The boat at that time was at the Southern Pacific slip, wasn't it? A. That is right.

Q. That is on the San Pedro side of the channel? A. Yes.

Q. Did you have him do some work there on the boat that morning?

A. When they came on board, just let go the lines, and I had Frank take the boat over. I went over with my car.

Q. When you speak of Frank— A. Muljat.

Q. Did you drive over to Terminal Island yourself in your car? A. That is right.

Q. When you got over to Terminal Island did you tell some of the crew to go to the warehouse and get a net?

A. When I drove over there I went already to the warehouse. I found out I had to get an order first to get it, to get the net, so I arranged for that already. Then I went to the boat, and when came the boat I told the men to clean out the turntable, clean out the net

(Testimony of Peter Cekalovich.)

place for [107] the net, to put it in, and then I guess some of them were eating a little bit before we went over there, having a bite to eat, and then Rudolph Carr, of the Marine Hardware Store, he was there, and I asked him if he could come over with the truck he had. I said, "You had better take them over there. What is the object of making a couple of trips in my car?" My car is a new car, and the boys sometimes have a little tar on them, and I don't like to dirty it too much, so I say to take the boys over and all went there except myself.

Q. The boys went in the other truck of the Marine Hardware Company? A. That is right.

Q. That was not the truck you were going to bring the net back in?

A. No, it was just a little truck.

Q. Were you there when Mr. Ruljanovich was injured? A. I was back of the truck, yes.

Q. Did you see whether or not Mr. Muljat was getting on the truck from the dock just before this 4 by 4 fell?

A. Well, it was the driver, he was backing in and out in order to come in alongside of the ramp, to come closer, so it would be easier to put the net on the truck. He couldn't make it. He tried a couple of times and he couldn't make it very well, so I told one of the guys for somebody to jump up on the truck and direct the driver how [108] to come in. He had a big platform truck. I just happened to look at the side when I said that, and somebody jumped—Frank jumped, but where he was I couldn't exactly tell you. I was looking side-

(Testimony of Peter Cekalovich.)

ways. The other man was directing, trying to get the truck in and start to work.

Q. With reference to the time that Frank jumped on the truck, when was it that this 4 by 4 fell?

A. Well, it fell right straight back, but where the timber was lying I couldn't see it.

Q. Did that fall just about the time that Mr. Muljat got on the truck?

A. I couldn't say exactly, because I didn't see him really jump on the truck.

Q. Did Mr. Muljat tell you afterwards that he was the one that grabbed the 4 by 4 and then it fell?

A. No, he didn't say exactly that he grabbed the 4 by 4; he just said he put his hand on something, put his hand on something, maybe up against the wall, but he didn't say he put it here and there; he say he put it on something, the way he jumped up.

Q. He said he put his hand on it when he jumped up?

A. Yes, but I don't know; he said that; I don't know what he put it on.

Q. Didn't he afterwards say that he was the one who actually pushed the 4 by 4 over? [109]

A. He never told me that.

Q. The food that you have on the "Betsy Ross" when you are fishing, do you have good food?

The Court: Has that anything to do with the case?

Mr. Fall: Certainly, Your Honor. I want to lay the basis for maintenance and that is the only way I can show the value of the food.

(Testimony of Peter Cekalovich.)

The Court: There is no question in the answer here that there wasn't good food on the "Betsy Ross"?

Mr. Fall: I am trying to show that it was good food.

The Court: The answer doesn't challenge that.

Mr. Fall: No, Your Honor, but I must put in evidence the value of the food as the basis for the maintenance.

The Court: That is all right, but as to the question of whether it was good or bad—

Mr. Fall: I did not mean it that way.

Q. Do you know approximately the cost of the food for each man, for the "Betsy Ross"?

The Court: Per meal?

Mr. Fall: No; per day.

Mr. Kappler: I am going to object to that as being immaterial, Your Honor. It is not the true test of what this man would be entitled to recover. The maintenance would not be covered by what the food cost on board the ship, I take it.

Mr. Fall: The cases hold that he is entitled to [110] maintenance in a sum equal to that of the value of what he received on board the ship.

The Court: I will let you put your proof in because it is before the court, without a jury, and I will take care of these matters when it comes to the law. Answer the question: What was the cost of feeding each man one day on the "Betsy Ross"?

A. Your Honor, it depends on how much value you get from one month to another month; there would be

(Testimony of Peter Cekalovich.)

a lot of difference; but on the average I would say around \$1.25 a day or \$1.50. [111]

Q. It averages between \$1.25 and \$1.50 a day, doesn't it? A. Somewhere around that.

Q. When you make your shares at the end of the dark you at that time, off of each man's share, take the cost of groceries, is that right? A. Yes.

Q. From those figures you get an idea of how much a day it has cost you for that dark?

A. That's right.

Q. The men, of course, live on the boat when they are in San Francisco? A. Oh, yes.

Q. Your boat fishes sardines, and did fish sardines for part of last season, that is, a year ago, in San Francisco? A. In Monterey.

Q. How many darks did you fish up there?

A. Two darks. Not quite—wait a minute. Just about two darks.

Mr. Fall: I have no further questions.

The Court: Any cross examination?

Mr. Kappler: No.

Mr. Fall: Counsel for the respondents and I can stipulate on the amount of the 1/17 share for the tuna and sardine seasons which Mr. Ruljanovich was employed, as [112] \$5050.46.

The Court: Was that the total catch?

Mr. Fall: That was 1/17 lay. That is what each member of the crew was paid.

Mr. Kappler: I will stipulate, Your Honor, that that figure represents 1/17 share which Mr. Ruljanovich

(Testimony of Milica Ruljanovich.)

would have gotten if he had continued on and fished those two seasons. If Your Honor should find that this man is entitled to 1/17 lay, then, of course, he would be entitled to that sum under that stipulation.

The Court: What are the two seasons that started in May, 1942?

Mr. Fall: I have the records here.

Mr. Kappler: Yes, they commenced in May of 1942; May 9, I believe it was, to and including February 16, of 1943.

Mr. Fall: That is correct. [113]

MILICA RULJANOVICH,

a witness called by and on behalf of the libelant, having been first duly sworn, testified as follows:

(George Ivankovich was here sworn as interpreter in the Croatian and English languages.)

The Clerk: What is your full name, please?

A. Milica Ruljanovich.

Direct Examination.

Q. By Mr. Fall: Mrs. Ruljanovich, you are the wife of Steve Ruljanovich? A. Yes.

Q. Who took care of Mr. Ruljanovich after the accident, when he was home? A. I did.

Q. Did he complain of any pain during the time that he was home, immediately after the accident?

A. Yes, he always did, when he came home.

Q. Did he complain of dizziness during that time?

A. Yes, he always did.

(Testimony of Milica Ruljanovich.)

Q. Did he complain of any of those things at any time before the accident? A. What?

Q. Did he complain of any of those things, either pain or dizziness, at any time before the accident?

A. No, he never did.

Mr. Fall: That is all. [114]

Cross-Examination.

Q. By Mr. Kappler: Immediately after your husband returned from the San Pedro Hospital did he complain of dizziness?

A. Yes, he did, immediately.

Q. After your husband came home from the hospital did he complain of headaches?

A. Yes, he did, and he still complains.

Q. You are the mother-in-law of my client, Mr. Cekalovich? A. Yes, I am.

Q. Did you and your husband live with my client, Mr. Cekalovich and his wife?

A. Yes, we did live together for ten or twelve years.

Q. How much did you pay to Mr. and Mrs. Cekalovich each month for your room and board?

Mr. Fall: To which we object as being improper cross-examination.

The Court: No, it might show the interest of the witness. If the witness has any financial arrangements at all it might go to her interest and bias.

A. Before we used to pay \$65.00 when it was cheaper living. Now we pay \$85.00.

Q. That is for the two of you?

A. Yes, for both.

(Testimony of Carl R. Bishop.)

Mr. Kappler: That is all. [115]

The Court : Do you rest, Mr. Fall?

Mr. Fall: Your Honor, I believe I rest. I don't know of anything more that I have, but I would like to wait until tomorrow morning before resting.

The Court: It is ten minutes to 5:00, and we have had no recess this afternoon. We will now take a recess until 10:00 o'clock tomorrow morning.

(Whereupon an adjournment was taken until 10:00 o'clock a. m., Friday, December 17, 1943.) [116]

Los Angeles, California, Friday, December 17, 1943;
10 a. m.

Mr. Kappler: I have a doctor here I would like to put on out of order, may it please the court.

The Court: Very well.

CARL R. BISHOP,

a witness called by and on behalf of the respondents,
having been first duly sworn, testified as follows:

The Clerk: What is your full name, Doctor?

A. Carl R. Bishop.

Direct Examination.

Q. By Mr. Kappler: Where did you get your medical education?

A. Los Angeles. I am a graduate of the College of Medical Evangelists.

Q. How long have you been practicing your profession in California? A. Since July of 1924.

(Testimony of Carl R. Bishop.)

Q. Are you on the staff of any hospital?

A. Yes, I am on the staff of all the local hospitals in Long Beach, and on the courtesy staff of the other hospitals in the harbor district.

Q. Are you a member of any medical societies?

A. All of the medical societies, County, State, and National. [117]

Q. What is the general nature of your practice, Doctor?

A. My work is traumatic surgery and general surgery, and some very small amount of general practice.

Q. Did you have occasion to examine Steven Ruljanovich on my behalf?

A. I did, on November 3rd of this year.

Q. Can you state generally the type of examination that you made?

A. The patient came to my office, and I questioned him as to his complaints and his physical condition, to learn about his physical condition. In other words, I obtained a complete personal history, and a history regarding his previous injuries, and following this I did a complete physical examination, beginning with the head and downward to the feet, and supplemented this examination by laboratory work consisting of a complete blood count, urinalysis, blood Wasserman, and I believe that was the extent of it. I took no x-rays at that time.

Q. Did you find, in the course of your physical examination, that this man was suffering from any observable abnormalities of any kind?

A. Yes, my laboratory work demonstrated the presence of a secondary anemia, and the physical findings

(Testimony of Carl R. Bishop.)

demonstrated a very severe condition of pyorrhea of his lower teeth. An examination of the head and vessels indicated the presence of an arteriosclerosis and a generalized thickening [118] of the vessels, which would accompany his age; and hypertensive heart disease.

Q. When you say he was suffering from arteriosclerosis, in lay language that means hardening of the arteries, doesn't it?

A. Hardening of the arteries and thickening of the blood vessels which accompanies age, and which is stimulated and brought about in many instances by infection.

Q. Doctor, as I understand it, it is possible to manually palpate the vessels so as to determine whether or not there is some thickening, is that correct?

A. Yes, in the forearm and upper arm the vessels can be palpated.

Q. Did the man give you a history of his present complaints?

A. Yes, he did. His present complaints consisted of headaches and dizziness and loss of memory; they seem to be his main complaints.

Q. In your opinion, Doctor, are any of those present complaints which this man now has referable to the trauma which this man received on May 4, 1942?

A. No.

Mr. Fall: To which we object at this time, as calling for the conclusion of the witness, without a proper foundation having been laid to determine whether or not he has been informed of the injuries, or what he was informed of. [119]

(Testimony of Carl R. Bishop.)

The Court: I think that goes to the weight of the testimony, counsel. On cross-examination you can clear it up. You may answer.

A. No, I found none of those findings that I mentioned were in any way attributable to trauma.

Q. By Mr. Kappler: Did the patient state to you the nature of the trauma which he received on May 4th?

A. Yes, he did. He recited to me about going to work in the morning, and going into a warehouse to get some sails, when a piece of 4 x 4 timber that was standing on end fell over and struck him on his head. He told me about what happened; about being taken to Dr. Steller's office for first aid; that he was conscious continuously; he remembered what was done for him. He was subsequently taken to the San Pedro General Hospital, which operates as a marine hospital, and was under the doctor's care there approximately a week.

Q. You, of course, were able to observe the exact area on the head where the blow was struck?

A. Yes, he had a well healed scar in the right anterior parietal region of the scalp, between three and four inches in length, and it is freely movable. There are no adhesions, and it is not at the present time tender to touch or pressure.

Q. You have stated that this man is suffering from secondary anemia, Doctor. The evidence which has already [120] been brought out discloses that a blood count was taken at the San Pedro Hospital following the infliction of the trauma, and at that time the blood count revealed 2,800,000 red blood cells, and a hemoglobin

(Testimony of Carl R. Bishop.)

count of 70 percent. Thereafter, I believe on November 3rd, you caused a laboratory examination to be made which revealed that the man had 4,350,000 red blood cells with a hemoglobin count of 78 percent. Evidence introduced yesterday by Dr. Walsworth, of San Pedro, who is now attending this man, revealed that on two occasions, one in December of this year, the other in November of this year, blood counts were done on this man, and in both cases the red blood count was under 400,000 and the hemoglobin count in each case was 76 percent.

Mr. Fall: Counsel, don't you mean under four million?

Mr. Kappler: Yes, under four million, and the hemoglobin count was 76 percent. Does that entire picture, Doctor, indicate anything to you?

A. That indicates, yes, a definite condition of secondary anemia which has been present since the first hospitalization in the San Pedro General Hospital, and with an improvement as far as the cellular count is concerned, and some slight improvement so far as the iron or hemoglobin is concerned, but still there is only 75 percent of hemoglobin present.

Q. Doctor, is the condition of secondary anemia something that is caused by a traumatic injury? [121]

A. It may be. It is an anemia. Anemia means deficiency of blood, and secondary anemia means it is secondary to some cause. There is always a cause of secondary anemia, and, of course, those causes are many. A very important cause is hemorrhage, loss of blood, and probably the next of importance would be infectious processes within the system, and, of course,

(Testimony of Carl R. Bishop.)

another very important cause at this time are dietary deficiencies.

Q. Did this man have any infectious process in his system that would account for the presence of secondary anemia?

A. I think so. The pyorrhea in his lower jaw is extensive and severe. I don't see how the anemia could be cured with that severe infectious process remaining.

Q. From your examination of the man's jaw did it appear to you that the condition of his gums was something which had existed for some period of time?

A. Yes, very prolonged. He has crowns, and he has partial plates; a condition of long standing.

Q. This man referred to dizziness, Doctor. That is one of the complaints he gave you, isn't it?

A. Yes.

Q. Would the fact that he is suffering from secondary anemia have anything to do with these dizzy spells he talks about?

A. Yes, one of the prominent causes of dizziness is [122] the absence of oxygen in the blood, and in the fluid of the brain, and if we have a deficiency in our blood volume, or deficiency in the quality of the blood, we have a condition of cerebral anemia, and the senses of balance are not as well oxynated, because of the requirement of our spleen and liver and bones and muscles for blood; and it is a very common cause of dizziness.

Q. Would the combination of secondary anemia and arteriosclerosis and this infection of the gums, which you characterize as pyorrhea,—would that combination

(Testimony of Carl R. Bishop.)

account, in your opinion, for all of the symptoms which this man now exhibits?

A. In my opinion, yes, sir.

Q. In your opinion is this man now suffering from the effects of a trauma which was sustained on May 4, 1942?

A. In no way whatsoever that I can determine, as a result of my examination.

Mr. Kappler: Nothing further.

Cross-Examination.

Q. By Mr. Fall: How do you account, Doctor, for the fact that he did not suffer from dizziness or headaches before May 4, 1942, and at which time he had a blood count of 2,800,000 and a hemoglobin of 70 percent?

Mr. Kappler: I object to that as being a misstatement of the evidence. He said before May 4, 1942, at which time he had a hemoglobin count of 2,000,000. That hemoglobin [123] count was not taken until after May 4th.

Q. By Mr. Fall: Immediately before May 4th. I think we can assume—

The Court: Was there any examination at all prior to the time of the accident?

Mr. Fall: No, Your Honor. The blood count was taken a very short time afterward, within two or three days.

Mr. Kappler: Within two or three days. The question in its present form is improper.

(Testimony of Carl R. Bishop.)

The Court: The form of it is improper; it should be assumed that on a certain date, and then ask him his opinion.

Q. By Mr. Fall: Doctor, assuming that on about the 6th or 7th day of May he had a blood count of 2,000,000 red corpuscles—2,800,000, with 70 percent hemoglobin, and prior to May 4th he never complained of any headaches or dizziness, how do you account for no complaints, or those things, at that time, or do you?

A. Do you mean on the 6th of May, two days after the accident?

Q. The 6th of May, a couple of days after the accident, he had this blood count taken, and found 2,800,000 with a 70 percent hemoglobin. You do not attribute that condition to the injury, do you?

A. I haven't been asked.

Q. Do you? A. Do I what? [124]

Q. Attribute that low blood count and a 70 percent hemoglobin to the injury he sustained?

A. I don't know. I don't know anything about a blood count prior to the injury. I think we are assuming facts that are not in evidence. I think it would be necessary to know what the blood count was prior to the injury, and after the injury, before anybody could make an opinion.

Q. Then your opinion at the present time is that you can't tell what the present condition of anemia is due to?

A. I have a very clear picture of what has occurred to this man since May 4, 1942, until November 3, 1943, when I saw him, which I think is sufficient to account for such symptoms as he has now.

(Testimony of Carl R. Bishop.)

Q. Why can't you account for that one on May 3rd? Why do you have to put in May 4th?

A. That was the day he was injured. I don't know what his condition was prior to the injury. He may have had dizziness prior to that time. I don't know.

Q. You never received any history of it?

A. I didn't question him about dizziness other than about his blood pressure. I knew he had a blood pressure. I never asked him if he suffered from headaches or dizziness before the accident. I did not go into dizziness. He stated to me that prior to the accident he had worked steadily, and was a healthy man.

Q. Now you attribute the headaches and dizziness to [125] anemia, is that right?

A. I do, yes, sir.

Q. At that time he did not have them, before May 4th?

A. I don't know that he did not have them. He told me he was a healthy man. I never saw the man prior to May 4th.

Q. Doctor, wouldn't that be very material in determining the cause of the headaches and dizziness, to determine whether or not he had them before the accident, when immediately after the accident he has a blood count taken, and it shows a very low count of red corpuscles, and only 70 percent hemoglobin?

A. I knew nothing about that when I made my examination. I know nothing about any tests made of him other than the test I made.

Q. You are very successful in evading my questions, Doctor—

(Testimony of Carl R. Bishop.)

The Court: Counsel, that is not proper.

Q. By Mr. Fall: Wouldn't it be very material, in determining whether the headaches and dizziness were attributable to anemia, to determine whether or not he had them before the accident?

A. If I had any way of determining it, yes.

Q. How do you determine that he had them afterward?

A. That was his complaint at the present time. He voluntarily stated to me his complaints.

Q. Wouldn't you determine whether or not he had them [126] before the accident in the same manner of asking him?

A. I asked him about his physical condition.

Q. You said he had a general condition of hardening of the arteries? I think I understood you to state that, is that correct?

A. Yes, he now has, yes, sir.

Q. Did you check the vessels,—the fundi, or fundus? A. No, I did not.

Q. Those are the vessels that are usually the first ones to indicate a general condition, or a condition of hardening of the arteries, isn't that correct?

A. They show evidence of sclerotic changes early in the presence of arteriosclerosis.

Q. If it were a fact that those vessels are normal at the present time, then would you change your opinion? A. Not at all, sir.

Q. As to whether or not there was a general condition? A. Not at all.

(Testimony of Carl R. Bishop.)

Q. Doctor, you can assume that those vessels are normal at the present time. Now, with that would you say he had a general condition of arteriosclerosis?

Mr. Kappler: There is no testimony in the record that the vessels of the eye are normal at the present time. The only evidence is from Dr. Dickerson's testimony that in January, 1943 the vessels appeared to be normal to him.

The Court: On cross-examination counsel can assume a [127] state of facts. The doctor can answer on a state of facts assumed by counsel in his question, which later he might be able to establish. On that theory I will permit the question.

A. May I hear the question again, please?

(Question read by the reporter.)

A. From my examination I would.

Q. By Mr. Fall: In his general condition you would expect to find the vessels in the eye, the fundus, showing some condition of arteriosclerosis, wouldn't you?

A. Not necessarily.

Q. Did you get a history that the man did suffer concussion of the brain in the injury?

A. Not in those terms, no, sir.

Q. Did you assume that he did sustain a concussion of the brain? A. No, I did not.

Q. What is a concussion, Doctor?

A. Concussion is that condition of the brain and its covering which follows severe blows or injuries in which unconsciousness accompanies the blow.

Q. Doctor, unconsciousness does not have to accompany a blow in order to sustain a concussion, does it?

(Testimony of Carl R. Bishop.)

A. In the true sense of concussion, yes, it does.

Q. You are familiar, of course, with a number of authorities on that point, aren't you? [128]

A. Every man has his opinion, that has seen and treated head injuries.

Q. There are many recognized authorities that hold that concussion can be mild, and it can be severe? Put it this way: In a mild concussion it is not always that you do have a period of unconsciousness, isn't that true?

A. What is your question, please?

The Court: Repeat the question, Mr. Dewing.

(Question read by the reporter.)

A. Which do you want?

Mr. Kappler: That is a compound question, Your Honor.

The Court: I think the doctor can take care of it.

A. He has spoken of two matters. He has spoken about authorities; then he has asked me the question as to whether or not unconsciousness is present. In answer to the latter part of the question first, it is generally understood that concussion, in its true sense, is accompanied by unconsciousness, and there are probably authorities on the subject regarding concussion. I have no recollection of any authorities that I have read recently that I can quote at this time stating that unconsciousness is not necessary.

Q. By Mr. Fall: Have you read anything by Sidney W. Gross? A. No, I have not.

Q. Are you acquainted with H. Biesen, on Gross psychological principles to head injuries? [129]

A. I never heard of him.

(Testimony of Carl R. Bishop.)

Q. Are you familiar with C. B. Corvill and C. A. Blumquest on Traumatic Cerebral Hemorrhage?

A. I am familiar with Corvill.

Q. Isn't it a fact that Corvill is of the opinion that unconsciousness does not necessarily follow a concussion?

A. I never asked him.

Q. Doctor, in making blood counts you will find variations due to different laboratory technicians, in their count, taking a blood count maybe one day, and the next day, and even the same, on different technicians, it might give a margin, even up to three or four hundred thousands difference in their actual count?

A. Do you want my answer to that?

Q. Yes. A. No, not the average technician.

Q. You do actually find it, though, don't you—find variation?

A. If you find it in hospitals it is not the same technician that does the count. So far as the hemoglobin is concerned, the method of evaluating the hemoglobin now, it is very accurate. Practically all laboratories and hospitals use colorimeters.

Q. I understand with a colorimeter you can be very consistent, because of the present method, by counting the corpuscles, but you will get a variation because of the [130] different technicians?

A. The different technicians, some should have their counts within fifty to one hundred thousand day after day.

Q. Doctor, after an injury to the head, you might call it a severe jarring, or, as Dr. Dickerson calls it, *commotio cerebri*—after a severe jarring of the head,

(Testimony of Carl R. Bishop.)

you would expect to find in a man of the age of Mr. Ruljanovich certain symptoms of dizziness and headaches, wouldn't you?

A. Yes, for a period of time.

Q. And often those things even get worse when the man returns to his work, isn't that correct?

A. That is, if he returns immediately. No, injuries of that nature recover quite promptly.

Q. Headache is a very common symptom after a severe jarring of the head, isn't it?

A. It is a subjective symptom.

Q. It is, of course, a subjective symptom, but it is a common symptom, isn't it?

A. A common subjective symptom, yes, sir.

Q. And a very common symptom is dizziness after the severe jarring of the head?

A. That is correct.

Q. Yet you are of the opinion that those conditions in Mr. Ruljanovich are not connected with the accident?

A. Eighteen months after the accident?

Q. Yes. [131]

A. Absolutely no connection at this time.

Q. Three months after the accident?

A. I did not see him at that time.

Q. Would you say within three months after the accident these complaints of his were not attributable to the accident?

Mr. Kappler: I don't think that is fair cross examination, unless counsel furnishes the doctor some more facts on which he can base his opinion. He hasn't anything indicated to him as to what the man's com-

(Testimony of Carl R. Bishop.)

plaints were three months from the accident, and what he was doing by way of activity, and what medication he was receiving.

Mr. Fall: If the doctor didn't get that information I don't think he is qualified to testify as to what he thinks they are caused from now. Maybe I should ask a preliminary question. I will withdraw that question.

Q. You did get a history from him of headache and dizziness from the time of the accident up to the present time? A. I did.

Q. In your opinion were the headaches and dizziness he complained of some three months after the accident attributable to the accident?

A. From the history that he gave me, and the extent of his injury, the length of time that he was in the hospital, his ability to be up and around after he left the hospital, it would be my opinion that three months would be [132] the upper limit of time for those symptoms to persist.

Q. After an injury of the nature sustained by Mr. Ruljanovich on May 4, 1942, you would expect a post-traumatic vasomotor instability, wouldn't you?

A. Yes, that condition very often follows injuries such as he sustained.

Q. You do find that he does have a vasomotor instability at the present time, don't you?

A. No, as far as my examination was concerned I find no evidence of vasomotor instability. The patient, however, told me that he took medication continuously for his blood pressure and for his vessels, and he re-

(Testimony of Carl R. Bishop.)

cited to me the doctors that he had been under continuously, which would indicate that it was necessary for him to be under supervision and treatment to keep his condition stabilized.

Mr. Fall: I have no further questions.

Redirect Examination.

Q. By Mr. Kappler: Doctor, this man was injured on May 4, 1942, and did not return to work until the middle of July of 1943. Now, do you have any opinion, based upon the examination which you made, and upon the history which you received, as to whether or not this man was fully recovered from the effects of the trauma which he received, by the middle of July of this year?

A. It is my opinion that he was fully recovered then, and had been before that. [133]

Q. The evidence will show that commencing in the middle of July and ending with the week of July 24, this man worked 40 hours in a cannery, and that ending the following week of July 31st he again worked 40 hours in a cannery, and the following week, August 7th, he put in 49 hours in the cannery, and the week of August 14th he put in 40 hours and 40 minutes; the week of August 28th, 45 hours 30 minutes; the week of September 4th, he put in 50 hours; the week of September 11th he put in 39 hours; the week of September 18th, he put in 44 hours; the week of September 25 he put in 37 hours; the week of October 2nd, he put 58 hours and 45 minutes; the week of October 9th, 74 hours and 15 minutes; October 16th, 74 hours and 45 minutes; October 23, 41 hours and 30 minutes; Octo-

(Testimony of Carl R. Bishop.)

ber 30th, 38 hours and 30 minutes. The evidence shows, Doctor, that the type of work he was doing was tailing cans, that is, taking the cans off of a conveyor belt of some sort, and placing them in a box. In your opinion, after reviewing the number of hours that this man worked, commencing with the week ending July 24th, and ending with the week of October 30th, would you say that the man was doing a pretty good day's work for a man of his age?

A. I would think he was certainly doing—putting in the average number of hours and over. There is overtime there as to a number of those weeks. It would seem like normal time—normal labor activity. [134]

Mr. Kappler: I think that is all.

Mr. Fall: I have no further questions.

DINKA CEKALOVICH,

a witness called by and on behalf of the libelant, having been first duly sworn, testified as follows:

Direct Examination.

Q. By Mr. Fall: Mrs. Cekalovich, were you with your father, Mr. Ruljanovich, when the changes were made in the deposition? A. Yes, I was.

Q. Before they were made did you receive a copy of the deposition?

A. Yes, you gave it to my father and me at your office.

Q. Then what did you do with it?

A. I took it home and read it to my father, and explained to him in our language his answers. He was surprised that he made so many mistakes.

(Testimony of Dinka Cekalovich.)

Mr. Kappler: I move to strike that.

The Court: It may go out.

Q. By Mr. Fall: That may go out. And then, did you make any changes?

A. He told me to put marks in each question where he tells me it was wrong; then when we went the next day to your office, and you asked him the same questions as I was explaining to him in our language, he was telling me what to [135] say in English, and I was writing it too.

Q. At that time the changes were made in the deposition?

A. Yes.

Q. Did he initial the changes at that time?

A. Yes, he initialed every one.

Q. Do you know how your father happened to go to Dr. Walsworth?

A. When he was at your office—

Mr. Kappler: I object to that as immaterial.

Mr. Fall: Counsel brought it out on cross-examination, that Dr. Walsworth was referred to him by David A. Fall. I think it bears a little explanation, as long as he brought it out.

The Court: Answer the question if you can.

A. When we were at your office, you told me that you had an accident, and I asked you who was taking care of you, what doctor, and you told me the name of this doctor. Then I said to my father about him, that I heard he was a very good doctor, and I heard other people too; my singing teacher told me my father should go to this kind of doctor. So when I came to you the next day I asked you his telephone and his name, and

(Testimony of Dinka Cekalovich.)

please to call the doctor and get an appointment for my father. You told me to go to him if you are satisfied, just to have an examination.

Q. By Mr. Fall: Your father went to see Dr. Walsworth? [136]

A. Yes, he did.

Mr. Fall: That is all.

Cross-Examination.

Q. By Mr. Kappler: Is it your testimony, Mrs. Cekalovich, that your father did not understand the questions in the deposition?

A. No, he didn't, because he was asked so many times, and he couldn't answer. It took him sometimes five or six times. You remember, don't you?

Q. I didn't think he had any trouble with it.

A. He had very many.

Q. Was it because the questions were complicated?

A. It was not. He doesn't understand. Very often, lots of times, he doesn't understand every word.

Q. You heard him testify in the courtroom yesterday, didn't you?

A. Yes, I did.

Q. He didn't have any difficulty in here, did he?

A. I think he did some; but at that time you asked him lots of times, ten times, until he was able to understand.

Mr. Kappler: That is all.

Mr. Fall: I would like to call Mr. Ruljanovich and ask him two or three questions if I may. [137]

STEVE RULJANOVICH,

recalled.

Direct Examination continued.

Q. By Mr. Fall: Mr. Ruljanovich, when was the first time that you saw Dr. Dickerson's report?

A. I saw him around; I remember around July—no, June. I don't remember.

Q. Where was it that you first saw the report?

Mr. Kappler: That is objected to as irrelevant and immaterial. A. The first time—

The Court: Wait a minute.

Mr. Kappler: I don't see what bearing it could possibly have on the case. The doctor has testified fully. The report is not in evidence. It is a question concerning a document which is not in evidence.

Mr. Fall: I want to show, and I think I should be entitled to show, that I have had to go into the defendant's camp to get the medical over a certain period of time. I think it bears a little explanation, as to why this man has to do that.

The Court: Haven't you developed all the facts, counsel?

Mr. Fall: No, Your Honor. There is a very serious one, I do want to develop.

The Court: If he knows about some other fact you can develop it. He has already produced medical testimony of his own. He has produced his doctor. [138]

Mr. Fall: Yes, Dr. Walsworth, but I mean over this earlier period of time.

The Court: If there is any fact that has not been developed, of course I will permit you to develop it,

(Testimony of Steve Ruljanovich.)

with reference to the doctors, his treatment, or anything else.

Mr. Fall: Maybe counsel will stipulate that at the hearing before the Industrial Accident Commission the defendants produced this report of Dr. Dickerson at that time, and that was the first time that Mr. Ruljanovich had received a report from Dr. Dickerson.

Mr. Kappler: I was not there, your Honor. I couldn't say. I did not represent the Occidental Indemnity Company before the Industrial Accident Commission.

Mr. Fall: You will stipulate, won't you, that the Occidental Indemnity Company, at the hearing before the Industrial Accident Commission, offered this report of Dr. Dickerson in evidence? I think a certified copy of the proceedings shows that.

Mr. Kappler: I will stipulate this, your Honor: That Mr. Roberts, the man who was on the stand yesterday, was, in August, 1942, the attorney representing Mr. Ruljanovich in a civil action directed against the Crescent Wharf and Warehouse Company, which action was filed in the Superior Court in Long Beach, and that in connection with the preparation of that action for trial Mr. Roberts referred this man to Dr. Dickerson, and that at that time Mr. Roberts [139] was representing Mr. Ruljanovich in the plaintiff's case. I will stipulate further that thereafter Mr. Roberts was substituted out of the case, and that Mr. Fall took over the entire proceeding. Maybe that will help you.

Mr. Fall: I will accept the stipulation.

The Court: Stipulation accepted.

(Testimony of Peter Cekalovich.)

Mr. Fall: Will you further stipulate that it was when this action was filed in admiralty on the claim against the Occidental Indemnity Company, before the Industrial Accident Commission, was when there was a substitution of attorneys in the case of Ruljanovich vs. The Crescent Wharf and Warehouse Company?

Mr. Kappler: No, because I have no knowledge of that. I do know that Mr. Roberts was substituted out of that, and you were substituted in, but I do not know when it was.

Mr. Fall: I think I have no further questions. I will call Mr. Cekalovich.

PETER CEKALOVICH,

called as a witness by and on behalf of the libellant, having been first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Fall: Mr. Cekalovich, you went to the emergency hospital, or drove to the emergency hospital, when you took Mr. Ruljanovich? A. I did. [140]

Q. After the accident? A. Yes, sir.

Q. Did you see him immediately after, or right after he was hit by this timber? A. Yes.

Q. Did you talk with him? A. No.

Q. Did he talk at all?

The Court: I think that was all covered by this witness. He said he was standing outside about a foot or two away. You showed him the map as to where he was standing..

(Testimony of Peter Cekalovich.)

Mr. Fall: I don't know whether he went into whether the man was knocked unconscious.

The Court: Yes, you went into all of that. Is that your recollection?

Mr. Kappler: Yes.

The Court: He stated fully, and that he was crying when he talked to him. You remember that?

Mr. Fall: I thought that came from another witness.

The Court: Wasn't that your testimony?

A. No, that was from Mr. Zica.

The Court: All right, go ahead.

Q. By Mr. Fall: Did you ask him any question?

A. I did not ask him any question, because I was trying to get in touch with the emergency hospital, to go, because I thought it was the emergency hospital there from [141] the island, but then I found out it was not, so I tried to call up an ambulance.

Q. So you don't know whether he was conscious or unconscious?

A. While I was there just a second I know he was lying down and saying nothing, but when I started to my car, to go over there to reach the ambulance.

Mr. Fall: I have no further questions.

Mr. Kappler: No questions.

Mr. Fall: The libelant rests.

Mr. Kappler: Call Mr. Christian.

Mr. Fall: Is this from the French Sardine?

Mr. Kappler: I think we can stipulate. I read some figures, your Honor, which I obtained from Mr. Chris-

(Testimony of Peter Cekalovich.)

tian, who is the accountant at the French Sardine Company, which indicated the number of hours that Mr. Ruljanovich worked, commencing with the period when he went back to work in July, 1943, and I have the figures for each week ending with the week of July 29th. I think we can stipulate probably as to the number of hours which he worked.

The Court: What is Mr. Christian's first name?

The Witness: Winter W. Christian.

Mr. Fall: Yes, we will stipulate that if he was called he would testify that his record shows these hours and the wages that were paid to Mr. Ruljanovich.

The Court: Put them in the record. [142]

Mr. Kappler: The week ending July 24, 40 hours; wages \$36.05;

Week ending July 31, 40 hours 15 minutes—have you got those, Mr. Christian?

Mr. Christian: Yes.

Mr. Kappler: I think probably it would be better to have him testify.

The Court: Swear Mr. Christian.

WINTER W. CHRISTIAN,

called as a witness by and on behalf of the respondents, having been first duly sworn, testified as follows: .

Direct Examination

Q. By Mr. Kappler: What is your full name, Mr. Christian? A. Winter W. Christian.

Q. This is the payroll record of the French Sardine Company, on Steve Ruljanovich, for the week ending July 29, 1943?

A. 40 hours. Gross earnings, \$36.05.

(Testimony of Winter W. Christian.)

Q. The week of July 31st?

A. 40 hours 15 minutes, \$36.22.

Q. The week of August 7th?

A. 49 hours, \$48.15.

Q. August 14?

A. 46 hours 30 minutes, \$44.77.

Q. August 21? [143] A. 42 hours, \$38.70.

Q. August 28?

A. 45 hours 30 minutes, \$43.42.

Q. The week of September 4th?

A. 50 hours, \$49.50.

Q. September 11?

A. 39 hours 30 minutes, \$36.22. This is some additional pay on account of the wage and hour adjustment.

Q. The week of September 17th he did not work?

A. No.

Q. The next week following the 11th would be September 18.

A. 44 hours 30 minutes, \$42.07.

Q. The week of September 25?

A. 37 hours 45 minutes, \$33.97. If you want the total, that's 435 hours. That's the end of a quarter.

Q. The next weekly period, October 2nd?

A. 58 hours 45 minutes, \$61.31.

Q. The next week is October 9th.

A. 74 hours 15 minutes, \$75.95.

Q. October 16? A. 47 hours, \$45.45.

Q. October 23?

A. 41 hours 30 minutes, \$37.80.

Q. October 30th?

A. 38 hours 30 minutes, \$35.15. [144]

(Testimony of Winter W. Christian.)

Q. That is October. The time is 260 hours.

A. That is all the time in '43.

Q. He didn't work after that?

A. No, sir. The record does not show it.

Q. In other words, from the week ending with July 24, 1943, until the week ending with October 30th, 1943, when he last worked for your company. Mr. Christian, Mr. Ruljanovich worked no less, on any occasion, than 37 hours in one week, isn't that correct?

A. That's right.

The Court: That is in the record.

Q. By Mr. Kappler: As I understand it, you are not restricted down at the French Sardine Company by the 40 hour week?

A. No, sir.

Q. I notice in one week, in October, he worked 74 hours.

A. That's right.

Q. Do you know, Mr. Christian, the type of work that is done down there when they refer to it as tailing cans?

A. Yes.

Q. Describe to the court what that is generally.

A. The cans of canned fish, after the fish is canned, are put into a large retort basket, and run into a retort, that is of a certain temperature and pressure, for a certain length of time, in accordance with the requirement of the State Health Department. Then another large basket, [145] containing, I guess, four or five hundred cans of the fish, is taken from the retort, the chambers in which they are steamed. They are then trucked back into the warehouse, and from there are taken out, and some classes of them are put directly into the cases in which they are stacked; some of them may

(Testimony of Winter W. Christian.)

be loaded right onto the conveyor, into the labeling machine.

Q. Does that work require any bending at all?

A. When you start, the retort baskets I guess will stand probably three and a half—I guess three and a half or four feet high, and when you first start unloading off the top basket, it will require no stooping, but as the basket empties out the man would have to bend over to get them out of the basket, either onto the conveyor belt, or put them in cases.

Q. I notice there is some difference in the number of hours worked each week. Is that explained by the amount of fish present in the cannery?

A. Probably. I haven't looked into that record to see why, but it could be. That was all the time required for the workers, on account of probably the light receipts of fish, and consequently the light run in the can processing. Sometimes we have heavy runs of it, which will require more time, or probably, if they had some rush orders, it would have required them to work more hours than others.

Mr. Kappler: That is all. [146]

Cross Examination

Q. By Mr. Fall: Mr. Christian, Mr. Ruljanovich didn't work after that last day in October?

A. That is the last record we have, the week ending October 30th.

Q. He didn't work after that? The record shows he didn't work after that?

A. That's right.

Mr. Fall: That is all.

NICK KARUZA,

a witness called by and on behalf of the respondents,
having been first duly sworn, testified as follows:

The Clerk: State your full name?

A. Nick Karuza.

Direct Examination

Q. By Mr. Kappler: Mr. Karuza, what is your occupation? A. Fisherman.

Q. On May 4, 1942, did you accompany Mr. Ruljanovich and the other seamen over to the Crescent Warehouse Company?

A. Yes. I was in the crew. We were together.

Q. Did you go over in a truck?

A. I went with the truck, small truck.

Q. By the time you got there had the door already been opened? A. Not yet. I was waiting. [147]

Q. Did you go around to the inside of the building, or did you enter the door from the outside?

A. Do you mean when he opened the door?

Q. Yes. A. We was waiting until he opened.

Q. You were outside waiting for the door to be opened? A. Yes.

Q. Where were you standing at the very moment that this timber struck Mr. Ruljanovich?

A. I was inside, close to him.

Q. How close to him?

A. About a foot from each other. I was close to him, standing up.

Q. Did the timber come close to you?

A. It missed me, and hit him.

(Testimony of Nick Karuza.)

Q. You saw the man who testified in court here yesterday, Mr. Gibson? A. Yes.

Q. Do you know who he is?

A. Yes. Not before, but yesterday, when he was here.

Q. You knew he was not part of the crew, anyway?

A. No, he was foreman of the warehouse.

Q. He was foreman of the Crescent Warehouse Company? A. Yes.

Q. Did you observe Mr. Gibson get up on the truck? A. Yes, I saw him. [148]

Q. At that time, would you tell me where Mr. Muljat was?

A. He first jumped, Mr. Gibson; then Mr. Muljat followed right away in the same truck after him.

Q. You mean by that that Mr. Gibson jumped up on the body of the truck, and Mr. Muljat followed him immediately? A. Yes.

Q. Did you observe the spot on the dock where Mr. Gibson jumped from? A. Yes, from here.

Q. You are referring to Respondents' Exhibit D, will you put the spot that Mr. Gibson jumped from, point it out? A. Here, close to the corner.

Mr. Kappler: May I mark that K-1, your Honor?

The Court: Yes.

Q. By Mr. Kappler: How did he get up onto the truck?

A. When he jumped he touched the corner with his hand.

Q. He touched the corner with his left hand?

A. His left hand, yes, when he jumped.

(Testimony of Nick Karuza.)

Q. How did Mr. Muljat get up onto the body of the truck?

A. The same thing, both; he followed him.

Q. The same thing Mr. Gibson did? A. Yes.

Q. The net was stacked up on this deck over here?

A. Yes.

Q. How far was it from the place where you have placed [149] this X over to the nearest portion of the net? A. A couple of feet.

Q. At least a couple of feet? A. Yes.

Q. How long was it after Mr. Gibson had gotten up onto the truck that the timber fell?

A. The timber fell—he first jumped, Mr. Gibson—he went, walked to where the driver stayed—what you call it?

Q. The cab?

A. The cab. Then Mr. Muljat followed him. Then the timber come at once. Nobody see how it come down.

Mr. Fall: I ask that that part of the answer "nobody see how it come down" be stricken.

The Court: That may go out.

Mr. Kappler: Yes.

Q. Did you hear Mr. Gibson shout any cry or warning to anyone? A. Crying?

Q. Did Mr. Gibson give a warning, "Look out," or something like that?

A. No, sir, he didn't say a word. Two policemen come there, and they examine how that come down, the timber. I pick the timber, and I put it back, and then

(Testimony of Nick Karuza.)

he said to the police, he said, "Look out." Then I told him, "Excuse me, you lie—" [150]

Mr. Fall: To which we object at this time.

Mr. Kappler: That may go out; any conversation he had after that.

The Court: It may go out.

Q. By Mr. Kappler: Mr. Karuza, you observe the standard here upon which the flag is raised?

A. Yes, sir.

Q. How much higher than that standard would you say that this timber was?

A. I believe it is at least four feet higher than that.

Q. Would you say the top of the timber would have come pretty close to the ceiling in this courtroom?

A. Four feet higher. It was between 16 and 18 feet high, that timber was.

Q. Did Mr. Gibson warn you, or any of the other fishermen there, of the presence of this timber, prior to the time that you started working around the net?

A. No, he didn't say a word.

Mr. Kappler: That is all.

Cross Examination

Q. By Mr. Fall: Mr. Karuza, did you help pick up Mr. Ruljanovich?

A. Yes, I was first to him when the timber come down; I picked him right away I saw him knocked down; I see the crack over his head, and blood rush all over his head, and I have the handkerchief and I close his wounds, and the [151] blood was around the place,

(Testimony of Nick Karuza.)

and I lifted him, and of course somebody else helped me to lift the man up. Then two or three guys come up to help me.

Q. Was he knocked unconscious?

Mr. Kappler: Just a minute. That is a conclusion. Develop the facts.

Q. By Mr. Fall: Did you say anything to him?

A. To who?

Q. Mr. Ruljanovich.

A. No, when he was knocked down I lifted him. Then I called for some more help. I help pull him to the center of the wharf.

Q. Did he talk then?

A. Nothing right away. Then he say, "Mother, it killed me." Those were the only words.

Q. After that did he say anything at all?

A. No, he didn't say nothing any more.

Q. Did you ride to the emergency hospital with him?

A. No; I helped put him in the car.

Q. Did he say anything at all, from the time that you just mentioned, that he made that remark, until you got him in the car?

A. No, he don't say a word. He couldn't say a word any more. We have drag him to the center, and until the car come to take him.

Q. Did you try and talk with him after that, that is, [152] during that period of time? A. No.

Q. You carried him out to the automobile?

A. Yes.

Q. Did you try and talk with him?

(Testimony of Nick Karuza.)

A. No, because we pick him, and put him right away in the car, and these boys take him to the doctor's office.

Q. Was he bleeding very badly?

A. I take I think a twelve-inch handkerchief, and cover his head, and it soak through all at once, like you put it in the water.

Mr. Fall: No further questions.

Mr. Kappler: That is all.

FRANK N. MULJAT,

called as a witness by and on behalf of the respondents, having been first duly sworn, testified as follows:

The Clerk: What is your full name?

A. Frank N. Muljat.

Direct Examination

Q. By Mr. Kappler: You are one of the owners of the "Betsy Ross"? A. Yes.

Q. What relationship, if any, do you have with the Crescent Wharf and Warehouse Company, a corporation?

Mr. Fall: To which we object as being incompetent, [153] irrelevant and immaterial, and not tending to prove or disprove any issue before the court.

The Court: I suppose it is preliminary, counsel.

Mr. Fall: I will withdraw the objection.

The Court: Proceed.

A. I don't have no relation whatsoever. Just I have stored net there.

(Testimony of Frank N. Muljat.)

Q. By Mr. Kappler: You store your net?

A. Yes.

Q. You pay them a certain amount of money for the privilege of storing your net there?

A. Yes.

Mr. Fall: We stipulate he did.

Q. By Mr. Kappler: Can you tell me the approximate date that you stored your net there prior to May 4, 1942, the approximate month?

A. I guess it would be in March.

Q. In other words, you stored your net there in March, and you went to pick it up on May 4, is that right?

A. That is right.

Q. You had not been over to the Crescent Warehouse Company between March and May 4, had you?

A. No.

Q. Did you go through the warehouse to get inside of it, or did you wait outside until the door was opened?

A. I don't recall. I think I was on the outside [154] waiting for the door to open.

Q. As soon as the door was opened did you walk into the building, when the truck was being backed into the building?

A. I walk in before the truck.

Q. You walked in before the truck?

A. Yes.

Q. How soon afterward was the truck backed in?

A. It started to back in right away.

Q. In other words, you walked in, and the truck backed right in?

A. Yes.

Q. Do you know how you got up on the truck?

(Testimony of Frank N. Muljat.)

A. Well, all I can state is when the captain of the boat says for somebody to direct the truck in—the first time the truck came in, the truck is too far away from the deck where the net was, and it would be hard for us to put the net on the truck, so he backed in again. I guess it was twice; both times it was he was too far out. Once he hit the side of the building. So he says “Somebody direct him in.” I jumped on the truck. I don’t recall whether I place my hand against the wall or not. If I did, I didn’t see any timber there; and I just jumped on the truck.

Q. It wasn’t much of a jump from the edge of the dock to the bed of the truck, was it?

A. I don’t know how high myself; I just guessing, two [155] or three feet to the truck. I must have jumped about a foot, I guess.

Q. State how high the net was stacked.

A. Naturally, when you stack a net, you can’t stack it square, like a box, or anything like that. You always stack your net backward, so it won’t be too much in front of you. Say the net is here, you pull the net, and it would be stacked more on a slant. It can’t be square.

Q. The net would be stacked so the base of it would be wider than the top of it? A. Naturally.

Q. How far away would you say that the edge of the net was from the edge of the dock?

A. At the bottom it was probably maybe a foot and a half, but then up higher it would be two or three feet, I guess.

Q. Let me ask you this: If a man stood on the concrete edge of the dock, could he have reached over

(Testimony of Frank N. Muljat.)

from the point designated F-1 and touch any portion of the net at a distance of four feet, or level with his shoulder, four or five feet?

A. I don't think so myself. He might be able to reach it with his hand; that is about all. I doubt if he could even reach it.

Mr. Kappler: That is all. [156]

Cross Examination

Q. By Mr. Fall: Mr. Muljat, after this accident happened there was a conversation about how this timber came down, wasn't there?

Mr. Kappler: I object to that as improper cross examination. I did not go into that subject matter at all.

The Court: Unless it was some admission.

Mr. Fall: I intend to show an admission, your Honor.

The Court: Of one of the parties? If it is an admission on the part of the parties it is admissible.

Mr. Fall: There was a conversation shortly after the accident, wasn't there, with reference to—

The Court: A conversation with whom?

Mr. Kappler: I object unless he lays the foundation.

The Court: With whom?

Mr. Fall: There was a conversation between yourself and some of the other members of the crew, shortly after the accident, as to how the timber came down.

A. What do you mean by shortly after?

Q. Within three or four minutes? A. No.

(Testimony of Frank N. Muljat.)

Q. Isn't it a fact, Mr. Muljat, that within a few minutes after the accident you made a statement that you had pushed or pulled the timber when you got on the truck, and that caused it come down?

Mr. Kappler: I object, unless he lays the foundation to [157] show who was present.

Mr. Fall: I will.

Q. Mr. Karuza was present, and the other members of the crew that went over there that morning, except the ones that took Mr. Ruljanovich over to the doctor's office?

A. I was one of the fellows that took him.

Q. Then the conversation took place before you left, and isn't it a fact that all the members of the crew were present, and you made a statement in substance that you had caused the plank to fall?

A. I don't recall making a statement there. Let's see. I did say something like this, though—it wasn't there within three or four minutes, like you say; that is wrong.

Q. When was it?

A. I did at one time. I don't recall when, in the excitement, I guess it was in the car, when I jumped on the truck, I didn't see anybody else on the truck, and figuring, as I thought—I don't recall putting my hand against the wall, but since I got on the truck I thought maybe that would be the only reason the thing fall, and I did say maybe it was my fault the plank fall, I thought. That was all I said.

Mr. Fall: No further cross examination.

(Testimony of Frank N. Muljat.)

Redirect Examination

Q. By Mr. Kappler: You don't recall, however, that you ever touched any timber, do you? [158]

A. No, I didn't even see it there. I didn't see the timber; nothing.

Q. As a matter of fact, you don't even know whether you touched the timber, do you?

A. No, I don't.

Mr. Fall: To which we object as being leading and suggestive.

The Court: He stated before. It is just a repetition.

Mr. Kappler: That is all.

The only other thing I have, your Honor, is this: I would like to read the deposition of Steve Ruljanovich.

The Court: If it is merely a repetition, why do you think it necessary?

Mr. Kappler. I don't think it is a repetition, because I expressly refrained from covering most of the material contained in the deposition, when Mr. Ruljanovich was on the stand, because it is in here.

Mr. Fall: I think that is true, your Honor. I think it should be read in, because certain objections will be made to certain questions, and we can save the objection to that time.

Mr. Kappler: I also want to object, your Honor, to the changes, of course, that were made at that time.

Mr. Fall: Do you want to read the questions, and I will read the answers?

The Court: Yes, that will keep it straight for the [159] reporter.

(The deposition of

STEVE RULJANOVICH

was here read as follows:)

“Direct Examination

By Mr. Kappler: Let the record show that Mrs. Dinka Cekalovich is present.

“Q—Mr. Ruljanovich, I am going to speak as clearly as I can, and if there are any questions that you do not understand, I want you to tell me so, because I want your testimony here this morning, and not the testimony of Mrs. Cekalovich or anybody else. Is that clear to you?

“A—Yes.

“Q—You will have to answer out loud, so that the reporter can get your answers. Don’t nod your head to say yes or no, speak whatever the answer may be. You understand that?

“A—Yes.

“Q—Are you employed at the present time?

“A—Yes.

“Q—Where are you working at the present time?

“A—We work a little bit on the boats.

“Q—Mr. Ruljanovich, are you working now?

“A—Oh, working now in French Sardines.

“Q—You are working now at the French Sardine, over on Terminal Island?

“A—Yes, sir. [160]

“Q—How long have you been working at the French Sardine Company, prior to the present time?

“A—Three months.

(Deposition of Steve Rutjanovich.)

"Q—You have been working over there for three months?

"A—Yes.

"Q—When did you go back to work, do you recall the date?

"A—Started work in 19th of July.

"Q—Of 1943? I don't want you to turn to Mrs. Cekalovich for your answer. I want you to answer.

"A—19th of July.

"Q—19th of July, 1943?

"A—Yes.

"Q—Was that the first work that you had done since the 4th day of May, 1942?

"A—Yes.

"Q—So between the 4th of May, 1943, and the 19th of —"

Mr. Kappler: It should be the 4th day of May, 1942.

"Q—So between the 4th day of May, 1942, and the 19th day of July, of this year, you haven't worked for anyone?

"A—No.

"Q—On the 4th day of May, the day that you were injured, will you tell me just exactly what happened to you, when you were hit by this timber?

"A—Well, I'd been sitting in the warehouse on the wharf of cement— [161]

"Q—Just a moment. I want to know what happened to you after you were hit. I don't care about what happened before. After you got hit, what happened to you?

"A—Afterward I fell down, when it hit me.

(Deposition of Steve Ruljanovich.)

"Q—All right, did you pick yourself up?

"A—No, that other fellow. I was like dreaming. I understand, but not exactly everything.

"Q—In other words, you were not completely out, but you were sort of hazy, is that it?

"A—I was.

"Q—Did you know, however, that things were going on around you?

"A—Sure.

"Q—You realized that some of the men were trying to pick you up?

"A—Yes.

"Q—Did they pick you up?

"A—They picked me up.

"Q—Where did they take you?

"A—In a machine.

"Q—Where did they take you in the machine?

"A—The machine take me to Wilmington to make me stitches in my head.

"Q—Do you know where they took you in Wilmington? Did they take you to a doctor?

"A—To a doctor. [162]

"Q—Who took you?

"A—Pete Cekalovich and Muljat and Zipko, Joe Zipko.

"Mr. Kappler: I move to strike the answer, as not responsive. Do you know where they took you, the name of the doctor, or the name of the place you went to?

"A—I went to Dr. Steller.

"Q—Someone at Dr. Steller's office looked at you?

"A—Yes.

(Deposition of Steve Ruljanovich.)

"Q—Do you know which doctor it was?

"A—Well, I don't know just his name. He make the stitches at Steller's orders.

"Q—One of the doctors?

"A—One of the doctors, yes.

"Q—At that time, were you able to walk in from the car to the doctor's office?

"A—No. They carry me."

Mr. Kappler: That is changed from "Well, I walking, but just like—Pete take me."

"A—No. They carry me. Pete Cekalovich, because I couldn't walk by myself.

"Q—In other words, they helped you in, but you were on your feet, weren't you?

"A—No."

Mr. Kappler: It was changed from "Oh, yes, I was on my feet, but I go alone I fall down."

"Mr. Kappler: What I am trying to find out, Mr. [163] Ruljanovich, is simply this: You left the car and you had your feet on the ground, but Mr. Cekalovich was assisting you in getting in, isn't that right?

"A—No."

Mr. Kappler: The answer was changed. It was previously "Yes."

"Q—He didn't take you under his arm, or put you on a stretcher, and take you in that way, did he?

"A—I don't know."

Mr. Kappler: The answer was "No." The answer now is "I don't know."

"Q—When you got in there, the doctor took some stitches, where?

"A—Stitches, and sent me to a hospital.

(Deposition of Steve Ruljanovich.)

"Q—They didn't stitch you there in Dr. Steller's office?

"A—No, no.

"Q—What did they do at Dr. Steller's office?

"A—Steller's office, he make my stitches, but after that he sent me to hospital.

"Q—He didn't take the stitches at the hospital?

"A—No, sir, he took them, another fellow took them.

"Mr. Fall: Listen to the questions, and if you don't understand it, don't answer it.

"(Discussion off the record)

"Mr. Kappler: In order to clarify what you have just [164] said, Mr. Ruljanovich, it is true, isn't it, that at Dr. Steller's office they took some stitches in your head?

"A—Yes.

"Q—Did they do anything else for you at Dr. Steller's office?

"A—No, we didn't do nothing.

"Q—Did they take any X-ray pictures of you?

"A—Oh yes, they took X-ray pictures before to make my stitches.

"Q—Do you know what part of your body they X-rayed?

"A—They X-ray, he took me—you know how they take X-rays? I don't know.

"Q—You don't know?

"A—No, I don't know.

"Q—Where did you hurt when you went into Dr. Steller's office? Where did you have pain?

"A—I had pain in my head.

(Deposition of Steve Ruljanovich.)

"Q—Anywhere else?

"A—At the time I didn't feel it, but after a couple of weeks, I did.

"Q—Stick to the question. At that time, at the time you went to Dr. Steller's office, did you have pain only in your head?

"A—Sure.

"Q—Did you have any marks on your body anywhere that you could see? [165]

"A—No.

"Q—Did you, yourself look at this mark, if any, that was on your head? Could you see anything on your head?

"A—No.

"Q—Was it bleeding?

"A—Oh, it was bleeding, yes, bleeding, sure.

"Q—Did you look at it in a mirror?

"A—No.

"Q—Did Dr. Steller bandage up your head?

"A—Sure.

"Q—From there you went where?

"A—San Pedro."

Mr. Kappler: The answer now is "San Pedro." It was "Seaside."

"Q—Or San Pedro?

"A—San Pedro.

"Q—Whom did you see in the San Pedro hospital?

"A—In San Pedro, they take me to hospital on 7th Street.

"Q—Do you know the name of the hospital?

"A—I do, 7th Street.

(Deposition of Steve Ruljanovich.)

"Q—San Pedro Hospital?

"A—San Pedro Hospital, yes.

"Q—That is on the same day?

"A—Same day, yes.

"Q—What did they do for you there? [166]

"A—They put me in the bed, put me to bed, and they took pictures and took care of me, Dr. Petrich.

"Q—How long did you stay at the San Pedro Hospital?

"A—One week.

"Q—During that one week, was Dr. Petrich the man who took care of you all the time?

"A—Yes, he took care of me. I was a couple of times right here in his office, in the Post Office, where he got office.

"Q—I mean, during that one week, you were in the hospital all the time, weren't you?

"A—Yes.

"Q—You didn't leave?

"A—No, no.

"Q—During that one week period, did Dr. Petrich take care of you all the time?

"A—Yes, sure.

"Q—Did you see any other doctor during that first week?

"A—No.

"Q—Besides the doctor at Dr. Steller's office and Dr. Petrich?

"A—No, I didn't see anyone.

"Q—Where did you go after you left the San Pedro Hospital?

"A—Stayed home. [167]

(Deposition of Steve Ruljanovich.)

"Q—You went home?

"A—Sure.

"Q—Where did you live at that time?

"A—We lived in 14th Street.

"Q—14th Street?

"A—642 14th Street.

"Q—You didn't live with Mr. Cekalovich, did you?

"A—Yes, we live together.

"Q—Your daughter is Mr. Cekalovich's wife?

"A—Yes.

"Q—You went to Mr. Cekalovich's home and you stayed there, after you left the San Pedro Hospital?

"A—Yes, sir.

"Q—Did you stay at that home continuously up to the present time?

"A—Yes."

Mr. Kappler: The answer was "Yes," it now is "Yes, except on vacation."

"Q—You are still there?

"A—Sure.

"Q—You were living at Mrs. Cekalovich's home before this accident happened, weren't you?

"A—Yes.

"Q—When you got home, how long did you stay in bed, all of the time?

"A—No, I stayed five days, then I tried to walk a [168] little bit, but I feel still dizziness, headache."

Mr. Kappler: The answer was "No, I stayed a couple of days, then I tried to walk a little bit, but I feel still dizziness, headache."

(Whereupon an adjournment was taken until 2:00 o'clock p. m.) [169]

(Deposition of Steve Ruljanovich.)

Afternoon Session, 2:00 O'clock

Mr. Kappler: Commencing at line 1, page 11:

"Q—You felt headache and dizziness?"

"A—Yes.

"Q—During the time you were in the San Pedro Hospital, how did you feel?"

"A—I feel always headache in the beginning, then afterwards feel better, but always keep me dizzy when I move."

Mr. Kappler: That is the way it appears now. It was: "I feel always dizzy in the beginning, then afterwards feel better, but always keep me dizzy."

"Q—Did you complain about the dizziness to Dr. Petrich?"

"A—Yes, sir.

"Q—You told him all about that?"

"A—Sure.

"Q—When you left the San Pedro Hospital, you told him you were still dizzy?"

"A—Sure.

"Q—After you got home, you say you were in bed for a couple of days, and then you tried to get up, and then you felt a little dizzy?"

"A—After 5 days, yes."

Mr. Kappler: The answer was "Yes."

"Q—I take it, you didn't go back to bed right away [170] after that? You were up and around after that, more or less?"

"A—Yes.

"Q—When did you see Dr. Petrich again?"

"A—I saw Dr. Petrich after one week, a couple of times.

(Deposition of Steve Ruljanovich.)

"Q—After one week. Did you go back to the hospital again to see him?

"A—No, I went to Post Office.

"Q—He has an office in the Post Office?

"A—He has an office in the Post Office, yes.

"Q—When you went back, after the week, how did you go down to his office?

"A—Well, he says—

"Q—How did you go to his office, did you walk or ride, or go in an ambulance?

"A—First time in auto by Mr. Cekalovich."

Mr. Kappler: The answer was "Yes, I walk slowly."

"Q—You walked from 14th Street down to his office?

"A—Yes, but I took the bus, the second time."

Mr. Kappler: The answer was: "Yes, but I took the bus."

"Q—When you got down there, what did you tell him about your condition?

"A—Well, he told me—

"Q—What did you tell him?

"A—I says I always feel, I never feel like I did. That hit my teeth, these teeth don't get fixed, cost me \$100.00 [171]

"Mr. Kappler: I move to strike out the latter part of the answer, as not responsive to the question. What did you tell the doctor about how you felt, in the week you were home?

"A—He says—

"Q—I don't care what he said. What did you tell him about how you had felt during the week you were at home?

(Deposition of Steve Ruljanovich.)

"A—I told him I didn't feel like I was very good, because I feel very bad at that time.

"Q—How did you tell him you felt? You say you felt bad? Did you tell him, did you tell the doctor just exactly what made you feel so bad?

"A—Sure.

"Q—What did you tell him?

"A—I told him I got hurt in Crescent Warehouse.

"Q—He knew that before, didn't he, when you first went down to the San Pedro Hospital, how you got hurt?

"A—Yes, he says to me—I don't know myself—one board fell on my head. I didn't know, I didn't say nothing.

"Mr. Kappler: I move to strike the answer.

"Mr. Fall: Mr. Ruljanovich, he doesn't want anything other than just the answer to the question. What did you tell Dr. Petrich, when you went down to the Post Office to see him?

"Mr. Kappler: That is all.

"A—I told him, he says, 'I think stitches are all [172] right. How you feel.' I said, 'I feel very badly yet.'

"Q—Is that all you told him?

"A—Sure.

"Q—That is all you told him?

"A—Sure.

"Q—That is all you can remember?

"A—Because I know I felt a lot of time when I walked, then I feel dizziness, I have to stop."

Mr. Kappler: It did read: "I hate to stop."

"Q—Did you tell him you felt dizzy?

(Deposition of Steve Ruljanovich.)

"A—I did tell him at that time, but afterward I felt worse, in my bones, for a long time. I feel it yet, nothing like it used to be."

Mr. Kappler: The answer was in the beginning: "I didn't tell him at that time."

"Q—In other words, when you went back to Dr. Petrich at the Post Office Building, the first time, you didn't tell him you felt dizzy?"

"A—I told him I felt dizzy, but afterwards, I never did see Dr. Petrich any more.

"Q—In other words, you did tell him that you were dizzy, did you?"

"A—I told him.

"Q—Did you tell him anything else about how you felt?"

"A—No, I didn't say nothing.

"Q—What did he do for you when you went back?
[173]

"A—He gave me some pills, to take 3 tablets a day.

"Q—Is that all he did?"

"A—He gave me one little box.

"Q—Did he take your clothes off and examine you?"

"A—No, just looked at my head.

"Q—He looked at your head, at the stitches?"

"A—Yes.

"Q—Did he look at your eyes?"

"A—Sure. He saw me a couple of times, with the eyes.

"Q—He would take his finger and pull your eyelids down?"

"A—Yes, sir.

(Deposition of Steve Ruljanovich.)

"Q—He didn't take any instrument and look in your eyes though?

"A—No.

"Q—Did he take your blood pressure?

"A—No.

"Q—How many more times did you see Dr. Petrich after that?

"A—After, from hospital, two times.

"Q—Two times after you got out of the hospital?

"A—That is all.

"Q—When did you last see Dr. Petrich, was it around the 1st of June?

"A—I guess last of May sometime.

"Q—Who was the next doctor you saw, after you last saw [174] Dr. Petrich?

"A—Then I went to Dr. Dunbar.

"Q—He is here in San Pedro?

"A—Yes, but not now. He was in San Pedro, sure.

"Q—You say he is not here now?

"A—Yes.

"Q—Dr. Dunbar was one of the doctors of the United States Public Health Service?

"A—No."

Mr. Kappler: The Answer was "Yes."

"Q—Was Dr. Petrich connected with the United States Public Health Service?

"A—Yes, he says to me, Dr. Petrich, 'You can see another doctor, if you feel dizzy.' Then I went to Dunbar for so many times, and afterwards, I saw a couple of times, Dr. Cassidy, and then Dr. Cassidy sent me to Memorial Hospital in Los Angeles."

(Deposition of Steve Ruljanovich.)

Mr. Kappler: The answer first read: "No, he says to me," and he changed it to "Yes, he says to me."

"Q—I want to know, was Dr. Petrich connected with the United States Public Health Service?

"A—Yes, Dr. Petrich told me—"

Mr. Kappler: The answer did read: "No, Dr. Petrich told me—"

"Q—How did you come to have Dr. Petrich?

"A—I saw him a couple of times, come from hospital. [175]

"Q—Did you pay him any money?

"A—No, I didn't pay him.

"Q—Was that insurance company that paid for Dr. Petrich?

"A—No, because Fisherman had that, he told me.

"Mr. Fall: We will stipulate—

"Mr. Kappler: Who is Dr. Petrich?

"Mr. Fall: He is with the United States Public Health Service.

"The Witness: He is in the Marine.

"Mr. Kappler: Dr. Petrich is with the United States Public Health Service?

"A—Sure.

"Q—Dr. Dunbar and Dr. Cassidy were also with the United States Public Health Service?

"A—No, because I don't feel good for a long time. Afterwards, Dr. Dunbar went to Army."

Mr. Kappler: The answer was "Yes, because I don't feel good for a long time. Afterwards, Dr. Dunbar went to Army."

"Q—And did Dr. Petrich discharge you?

(Deposition of Steve Ruljanovich.)

"A—No, Dr. Petrich discharged me because he said we don't do any more. When I am from hospital, he saw me, he told me, 'You feel bad, you can find some other doctor.' He told me.

"Q—When was it you first saw Dr. Dunbar?

"A—Oh, I saw Dr. Dunbar around June. This last [176] receipt here—

"Mr. Fall: Let the record show he is looking at some receipts.

"A—Yes, sir, Dunbar, I got some receipts here. He charged me \$25.00 to visit Los Angeles.

"Mr. Fall: He asked you when did you go to Dr. Dunbar?

"(Discussion between Mr. Fall and the witness.)

"A—June 23.

"Mr. Kappler: You think you first saw Dr. Dunbar about June 23?

"A—Yes.

"Q—Is that right?

"A—Sure.

"Q—So between the end of May and the 23rd of June, you didn't see any doctor, did you?

"A—No, no.

"Q—You were not in bed during that period, were you?

"A—Yes, I been in bed. Sometimes I try to go out, and I went to bed afterwards, because I didn't feel good.

"Q—On both of the times you went down to see Dr. Petrich, you went down by yourself, didn't you?

"A—No."

Mr. Kappler: The answer was "Yes."

(Deposition of Steve Ruljanovich.)

"Q—You are not going to tell me that after you saw Dr. Petrich and before you saw Dr. Dunbar for the first time, you were in bed all the time, are you?
[177]

"Mr. Fall: To which I object, as argumentative."

Mr. Kappler: There was no answer to the question.

The Court: There is nothing to rule on then.

"Mr. Kappler: You were up and around the house, weren't you, during the time following your last visit to Dr. Petrich?

"A—Yes, that is what I told you. I saw him a couple of times. Then I went to Dr. Dunbar. Then I stayed with him.

"Q—What examination did Dr. Dunbar make of you?

"A—Dr. Dunbar, he make examination of my head. He tell me, 'Maybe you feel—

"Q—I don't care what he told you. What did he do?

"A—He visit my head, an examination he used about high blood pressure.

"Q—He examined your head?

"A—Yes.

"Q—What did he examine your head with?

"A—He took a look at it.

"Q—With his fingers?

"A—Yes.

"Q—Or with his eyes?

"A—Sure.

"Q—Did he look in your eyes with any instrument of any kind?

"A—Yes, he looked at me a couple of times.

(Deposition of Steve Ruljanovich.)

"Q—What instrument did he use? [178]

"A—You know that X-ray man. I don't know what he calls it, because I forget it.

"Q—Tell me what he did?

"A—He took me, look see my eyes a couple of times. Then always he look in my head, and a couple of times blood pressure.

"Q. He put a band around your arm and took the blood pressure?

"A—Yes.

"Q—Did he test your heart?

"A—Yes.

"Q—Did he make any other tests of you?

"A—No, next time I feel my bone right here in the back.

"Mr. Fall: Indicating the back of his neck.

"Mr. Kappler: That is on the next visit?

"A—Yes, he says, 'That is from your head and you got from your injury.' "

Mr. Kappler: The answer was "Yes, he says, 'That is from your head and you got bad health.' "

Mr. Kappler: I move to strike that as hearsay, since he related the conversation that this man had with the doctor.

The Court: Yes, but you asked him.

Mr. Kappler: I asked him the question. "Did he make any other tests of you?" The answer was "No, next time I [179] feel my bone right here in the back." Then I asked "That is on the next visit?" He said, "Yes, he says, 'that is from your head and you got bad health.'" That was changed to "from your injury."

(Deposition of Steve Ruljanovich.)

Then I moved to strike out the last answer as being hearsay, and also as not being responsive.

The Court: It is not responsive. Proceed. It will go out.

"Q—On the second visit that you made to Dr. Dunbar, you had a different complaint of pain, didn't you?

"A—No, no, because when I been there, always I feel dizzy.

"Q—You still felt dizzy?

"A—Yes.

"Q—You mentioned something about a pain in the back of your neck. You hadn't mentioned that before. When did that first come to light?

"A—I didn't feel it before. For two weeks afterward I couldn't move my head and neck."

Mr. Kappler: The answer was "I didn't feel it before. For two weeks afterward I couldn't move my throat."

"Q—So that just before you saw Dr. Dunbar, for the first time, you developed a sore neck, in the back?

"A—Yes, that's so.

"Q—Was it sore to the touch?

"A—Yes, sure.

"Q—Did he look at it? [180]

"A—Yes, he took a look at it, sure.

"Q—Did he put anything on it?

"A—No, he don't say nothing.

"Q—Did he do anything to it?

"A—No.

"Q—Went on back home that day, did you?

"A—Sure.

(Deposition of Steve Ruljanovich.)

"Q—How many more times did you see Dr. Dunbar?

"A—Oh, about 7 or 8 times.

"Q—When was the last time that you saw him?

"A—The last time that I saw him, August.

"Q—August, 1942?

"A—Yes, August 25.

"Q—Had your condition changed any between May 4 and August?

"A—Well, you know I feel a little better but still headaches and dizziness. Then I been home trying to work a little in garden. I tried 5 or 10 minutes. Then I stopped it and couldn't work."

Mr. Kappler: The answer was "Well, you know I feel a little better but I still dizziness."

"Q—You think though, that your condition had improved a little bit between May 4th and the end of August?

"A—Yes, a little bit, but still dizzy and headaches."

Mr. Kappler: The answer was "Yes, a little bit, but still dizzy."

"Q—Were you dizzy all of the time, every minute of the [181] day?

"A—Not all the time, but sometimes a little less. I feel now, excuse me, I feel right now just like somebody grabbed me, right now, my head."

Mr. Kappler: The answer was "Not all the time, but sometimes a little less, especially when a change weather."

"Q—In August, 1942, you didn't feel dizzy every minute of the day, it would be just certain times of the

(Deposition of Steve Ruljanovich.)

day, wouldn't it, or maybe certain times of the week, depending on the weather?

"A—No."

Mr. Kappler: The answer was "Yes, just exactly."

"Q—What did Dr. Dunbar do for you, besides taking your blood pressure once in a while, and looking at your eyes? Did he give you any medicine?

"A—Well, he give me medicine, because he told me—"

Mr. Kappler: The answer was "Well, he don't give me any medicine, because he told me—"

"Q—I don't care what he told you. Did he give you any medicine?

"A—Yes."

Mr. Kappler: The answer was "No."

"Q—Did he give you any treatment?

"A—No.

"Q—Did he do anything for you?

"A—Yes." [182]

Mr. Kappler: The answer was "No."

"Q—Did he give you any instructions as to what you were to do?

"A—Yes."

Mr. Kappler: The answer was "No."

"Q—Did he give you any special diet, special foods to eat?

"A—Oh, yes.

"Q—What did he give you?

"A—He says to me, 'Don't eat so strong food, and take a lot of vegetables and drink milk.'

(Deposition of Steve Ruljanovich.)

"Q—Did he give you that in the form of typewritten instructions, or simply tell you?

"A—No, just told me.

"Q—Just told you not to eat too heavy?

"A—Yes.

"Q—And eat lots of vegetables?

"A—yes.

"Q—Tell you anything else about what you were to do?

"A—He said to me, 'You try to work in your garden.' And then rest. Then I told you a while ago I tried 5 or 10 minutes. When I tried more, I still got dizziness and I have to stop."

Mr. Kappler: The first part of the answer read "He said to me, 'You try to work in your garden.' And then rest." And the last reading, "and I hate to stop." [183]

"Q—The situation is just this, is it, that you were able to work in the garden for a time, but after a while you got a little dizzy?

"A—That is correct.

"Q—But I take it, you took care of your garden all that time?

"A—No."

Mr. Kappler: The answer was "Sure, I took care of the garden, and when I feel it—"

"Q—When you felt it, you quit?

"A—Yes.

"Q—When did you first see Dr. Cassidy?

"A—Well, Dr. Cassidy, I seen him September 16, 1942.

(Deposition of Steve Ruljanovich.)

"Q—So you saw Dr. Cassidy about fifteen days or so after you had seen Dr. Dunbar, is that right?

"A—Yes.

"Q—What did Dr. Cassidy do for you?

"A—Same story as Dunbar, he take a look at me.

"Q—Take your blood pressure?

"A—He saw me a couple of times, what my head is—I said to him, 'Always I feel dizzy.'

"Q—What did he do about your head? What examination did he make of your head?

"A—Oh, enough examination Mister, just like Dr. Dunbar.

"Q—Did he look at your head with any special instrument? [184]

"A—No.

"Q—Did he look at your eyes with any special instrument?

"A—No.

"Q—Did he make any tests upon you?

"A—No.

"Q—Did he prescribe any medicine for you?

"A—No, just told me take light stuff to eat.

"Q—In other words, he told you the same thing as Dr. Dunbar told you?

"A—Excuse me, he gave me some pills, some tablets to take a couple of times a day.

"Q—Did he give you a prescription for that?

"A—Yes.

"Q—Did you have it filled at some drug store?

"A—On Pacific and 7th Street.

"Q—How often did you take those pills? At night or during the day?

(Deposition of Steve Ruljanovich.)

"A—Before eating at noon and night, yes, when I get up in the morning sometimes.

"Q—That is all he did for you?

"A—That is all.

"Q—Had your condition gotten any better, at all, between the time you last saw Dr. Dunbar and the time you first saw Dr. Cassidy?

"A—I told the same story up there.

"Q—Pretty near the same? [185]

"A—Yes, I told the same story.

"Q—Did your condition get better under Dr. Cassidy?

"A—Not much, but before I quit Dr. Cassidy, he sent me to professor in Los Angeles, and charged me \$25.00 for the visit."

Mr. Kappler: The answer was "Afterward, I feel like starting in to work, but before I quit Dr. Cassidy, he sent me to professor in Los Angeles, and charged me \$25.00 for the visit."

"Q—What was his name?

"A—Memorial Hospital. I am very sorry, I forget.

"Mr. Fall: Was that White Memorial Hospital?

"A—Yes, I got that at home some place, I couldn't find it this morning.

"Mr. Kappler: Do you know his name?

"A—No.

"Q—Leave a blank space in the deposition, for the name of the doctor. You can write it in when you find it?

"A—Sure."

(Deposition of Steve Ruljanovich.)

Mr. Fall: Will you stipulate that that was Dr. Courville?

Mr. Kappler: That is in the deposition. It appears in here.

"A—Sure. Dr. Cyril Courville.

"Q—As I understand, this doctor that you went to see in Los Angeles was at White Memorial Hospital?

"A—Yes. [186]

"Q—When did you see him?

"A—I saw him January sometime.

"Q—January, 1943?

"A—I can't exactly tell you, because I forgot the receipt.

"Q—Was it around the first of the year?

"A—I think so.

"Q—How many times did you see Dr. Cassidy before you went to Los Angeles to see this doctor at the White Memorial Hospital?

"A—I saw him 5 or 6 times, half a dozen times.

"Q—On each of the times that you would see Dr. Cassidy, he would simply look at you and take your history, is that right?

"A—Dr. Cassidy sent me to that doctor.

"Q—I am talking about the occasion of your visits to Dr. Cassidy, he would simply do the same thing each time, maybe take your blood pressure, look at your head?

"A—Yes.

"Q—And that is all he would do?

"A—Yes.

"Q—Was it the last visit that you went to Dr. Cassidy, that he sent you to this doctor in Los Angeles?

"A—Yes, December 4.

(Deposition of Steve Ruljanovich.)

"Q—You didn't pay any money to Dr. Dunbar or Dr. Cassidy, did you? [187]

"A—I paid, sure.

"Q—How much did you pay to Dr. Dunbar?

"A—\$2.00 a visit.

"Q—How much did you pay altogether to Dr. Dunbar?

"A—I figured 5 times.

"Q—So you saw Dr. Dunbar about 5 times?

"A—Yes.

"Q—He charged you \$5.00 for the first visit and \$2.00 for each of the succeeding visits?

"A—Yes.

"Q—Making a total of \$13.00, that you paid to Dr. Dunbar?

"A—Yes.

"Q—Dr. Cassidy, you saw 4 times?

"A—Four times, yes. Maybe it is more, but I don't think so.

"Q—I mean, your best recollection is that you saw him about 4 times?

"A—Yes.

"Q—He charged you \$2.00 for each of the visits, with the exception of the visit of December 4, for which he charged you \$1.50, is that right?

"A—Oh yes, sure, one time.

"Q—Then you went up to this doctor in Los Angeles, and he charged you \$25.00?

"A—Yes. [188]

"Q—What examination did the doctor in Los Angeles make?

(Deposition of Steve Ruljanovich.)

"A—Well, he made some estimates on my eyes. He asked me some questions, how I feel, how my health is. I explained what I know exactly it is, then he wrote me one big letter, saying how the condition I could eat, I don't work so hard, he wrote me one big letter.

"Q—Did he give you any treatment?

"A—No, not that time. I was there only one time.

"Q—You only saw the doctor one time?

"A—I only saw that doctor one time.

"Q—He didn't prescribe any medicine for you?

"A—Yes."

Mr. Kappler: The answer was "No."

"Q—When did you see Dr. Dickerson?

"A—Oh, I seen him a couple of times. It was some-time July or June. I don't remember."

"Q—What year?

"A—1942.

"Q—You saw him in June or July of 1942?

"A—Yes.

"Q—Then you saw him how many times, twice?

"A—Twice.

"Q—He made an examination of you too?

"A—Oh, he asked me how I feel, my ear, look at my eyes, my head.

"Q—He made the same type of examination that the [189] doctor made at White Memorial?

"A—Yes.

"Q—The same general type of examination?

"A—Yes.

"Q—After you saw this doctor at White Memorial Hospital, did you see any other doctors?

"A—Yes."

(Deposition of Steve Ruljanovich.)

Mr. Kappler: The answer was "No."

"Q—You haven't been back to see any other doctor since that visit to the man at White Memorial?

"A—Yes, sir."

Mr. Kappler: The answer was "No, sir."

"Q—You haven't been back to the United States Public Health Service?

"A—No.

"Q—You have not requested, Mr. Ruljanovich, any slip or receipt which would entitle you to go to the United States Public Health Service?

"A—No.

"Q—Did you ever make any request, of any kind, of Mr. Cekalovich, for a slip, authorizing you to go to the United States Public Health Service?

"A—No.

"Q—I take it that your condition improved after the first of the year, 1943?

"A—Yes, I work a little at the cannery, but I don't [190] work hard. Sometimes, I glue, light work, not like before.

"Q—What kind of work are you doing at the cannery now?

"A—Sometimes I stencil cases, sometimes glue.

"Q—You stencil and you put glue on the cases?

"A—I stencil and I put glue on the cases.

"Q—Is that all you do?

"A—Sometimes I try to tailing cans.

"Q—What does that consist of? What do you do when you tail cans?

"A—The can goes through machine. I stand up, the can is here, and I put 48 cans in the case.

(Deposition of Steve Ruljanovich.)

"Q—You mean, as the cans come down a conveyor belt, you take the cans and pull them off into a case?

"A—Pull them off into a case, yes.

"Q—When the case is full, what do you do?

"A—Some people pile them up.

"Q—Somebody else takes the case away?

"A—Yes, somebody else takes the case away and puts them in the car, not me.

"Q—How much do you make? How much do they pay you?

"A—He pay me 90 cents per hour. That is the warehouse.

"Q—Do you work any overtime?

"A—Sometimes, but I don't feel like long hours.

"Q—Have you worked any overtime since you went back to work?

"A—Yes, I worked a little bit 3 or 4 times." [191]

Mr. Kappler: The answer was "Yes, I worked a little bit, but not now."

"Q—Nobody is working overtime now?

"A—Yes, they are."

Mr. Kappler: The answer was "No, because not so much fish in dark."

"Q—A little while back, when you had more fish, you were working overtime?

"A—Oh, I like to go when I make my 8 hours, because the other time is long hours for me, don't do me good.

"Q—I mean, even though you don't like to work any longer, you actually do?

"A—Yes, I would be working a couple of times.

(Deposition of Steve Ruljanovich.)

"Q—How much did they pay you for overtime work?

"A—After 8 hours, time and a quarter; after 10 hours time and a half.

"Q—There were some occasions when you got time and a half?

"A—Sure.

"Q—What kind of work were you doing at the French Sardine Company before May 4, 1942?

"A—A heavier job."

Mr. Kappler: The answer was "The same job."

"Q—You were tailing cans?

"A—No, not before I didn't tail cans. Before, I work more hard, in the baskets feeding that oval machine. Not now. [192]

"Q—How much did they pay you for that?

"A—85 cents."

Mr. Kappler: The answer was "Oh, that time when I start, 45 cents, 50 cents and at the last 85 cents."

"Q—How long had you been working at the French Sardine Company before you quit?

"A—Seven years.

"Q—During that 7 year period, you hadn't done any fishing, had you?

"A—No, I don't do fishing.

"Q—Where did you work before you worked for the French Sardine Company, and 7 years before 1942?

"A—Before I worked for the French Sardine? Fishing."

Mr. Kappler: The answer was "Before I worked for the French Sardine? I been working farming, pruning trees and picking apples, all kinds of fruit."

(Deposition of Steve Ruljanovich.)

"Q—You were a farmer?

"A—15 or 16 years I been working in apples, all kinds of fruit.

"Q—How long had you done that work?

"A—I have been working for about 12 or 13 years.

"Q—When was the last time that you had ever been out to sea, as a fisherman?

"A—The last time in 1935, I been fishing seven or eight months with the owner of Alexander."

Mr. Kappler: The answer was "The last time in 1935, I [193] been fishing a couple or three months with the owner of Alexander."

"Q—In 1935, you had 3 months fishing?

"A—Maybe 1934, and 1935, about 8 months."

Mr. Kappler: The answer was "Maybe 1934."

"Q—You were out 3 months fishing sardines?

"A—No, I just fished only tuna. Yes, sardines, that is right. We were out fishing one dark in San Francisco, and one month at San Pedro. We go to local fishing tuna in San Pedro in 1935 and also Mexico."

Mr. Kappler: The last part of the answer read "We were out fishing one dark in San Francisco. We go to local fishing tuna in San Pedro in 1935."

"Q—You give me your best judgment. 1935?

"A—Yes, sure.

"Q—From that time on, you worked at the French Sardine Company?

"A—Yes.

"Q—So after you quit working on the farm, you made one fishing trip?

"A—No."

(Deposition of Steve Ruljanovich.)

Mr. Kappler: The answer was "Yes, and that was the only one."

"Q—When was it, before you worked on the farm, that you fished?

"A—I had lots of jobs. I been on Alexander. I been [194] all over. I been working fishing in a trap for Pacific American Fisheries in 1912, other fishing in 1918 and 1920."

Mr. Kappler: To the last part of that answer there was added "other fishing in 1918 and 1920."

"Q—How did you feel when you went back to work for the French Sardine Company in this year, June or July of this year?

"A—When I start to work I feel better, but always I never feel like I used to be.

"Q—Do you have any headaches?

"A—Sometimes, yes, I feel headaches, not much, but I feel sometimes.

"Q—When you went to see Dr. Petrich, did you have any headaches then?

"A—Sure, but then I feel worse."

Mr. Kappler: The answer was "Sure, but gone I feel worse."

"Q—Do you have headaches every day?

"A—Mostly steady that time every day. Now, not every day.

"Q—You had headaches when you went to see Dr. Petrich?

"A—Sure.

"Q—But not every day. You wouldn't have a headache all day long and all night long?

"A—No, steady, but every day."

(Deposition of Steve Ruljanovich.)

Mr. Kappler: The answer was "No, steady." [195]

"Q—They come back?

"A—Yes, one day a little less, one day a little worse.

"Q—When you went to see Dr. Dunbar, did you have headaches then?

"A—Yes.

"Q—Were they any worse than they had been before?

"A—Not worse, but they keep me, I don't feel to work at that time too.

"Q—When you went to see Dr. Cassidy, did you have headaches?

"A—Some, certainly.

"Q—Did you complain to him about headaches?

"A—Sure, always I complain.

"Q—Along the first of 1943, how often did you have headaches, January of 1943?

"A—Oh, you mean I feel headaches?

"Q—Leave, maybe they will last an hour and go away?

"A—You mean how long they last?

"Q—Yes?

"A—Last time, sometimes for a day, sometimes less. I tell you the truth. Yesterday, I been working, I don't feel it. This morning when I got up, it grabbed my head.

"Q—There were lots of days when you didn't have headaches at all?

"A—No, not at all. Always a little bit, not exactly perfect like it used to be. I never like that. I was [196] strong, a person my age, but I been strong for my size, but not now like used to be.

(Deposition of Steve Ruljanovich.)

"Q—I understand you are not like you used to be according to what you tell me, but I am trying to get at the headaches. Do you have them every day or not?

"A—Not every day. Like grabbing, you move your hands that way.

"Mr. Fall: Indicating a grabbing motion on the top of his head.

"A—On the top of the skull.

"Mr. Kappler: Where is the cut?

"A—Right in the center. It is only 7 stitches from here to here.

"Q—Do you pay Mr. and Mrs. Cekalovich any money for your support at the house, or did you pay any rent?

"A—Yes, we live together. I pay rent.

"Q—How much did you pay?

"A—We pay \$20.00 now.

"Q—You pay \$20.00 now?

"A—Yes.

"Q—How long have you paid \$20.00, ever since you have been working again?

"A—Sure, the beginning \$15.00. Now I pay \$20.00.

"Q—What do you mean, in the beginning?

"A—Because now it is a little more rent.

"Q—In other words, you mean before the accident, you [197] were paying \$15.00?

"A—Yes.

"Q—Who do you pay that to?

"A—I pay it to Mr. Cekalovich.

"Q—That was to cover your board and your living?

"A—No."

(Deposition of Steve Ruljanovich.)

Mr. Kappler: The answer was "We worked. We couldn't eat. I put in \$20.00. They put in \$20.00."

"Q—Before May 4, you put in \$15.00?

"A—Yes, for rent."

Mr. Kappler: The answer was "Yes."

"Q—After May 4, you were not working at the French Sardine, so between May 4 and the time that you went back to work for the French Sardine Company, you did not put in any money, did you?

"A—Yes."

Mr. Kappler: The answer was "No."

"Q—You didn't have any to put in?

"A—Yes."

Mr. Kappler: The answer was "No."

"Q—You were not making any?

"A—No.

"Q—Now, since you have been working at French Sardine, you are putting in \$20.00 a month?

"A—\$20.00 a month rent and \$60.00 a month board."

Mr. Kappler: The answer was "Sure." [198]

"Q—I take it, during the time you were laid up. Mr. Cekalovich did not expect you to pay anything then?

"A—Yes. I pay always, because sometimes I pay all the time my rent."

Mr. Kappler: The answer was originally written "No, I pay always, because sometimes I pay all the time my rent."

"Q—I thought you told me you started paying again when you went back to work?

"A—No, I pay always straight.

"Q—You paid right along?

"A—Sure, right along.

(Deposition of Steve Ruljanovich.)

"Q—Even when you were not making any money?

"A—Sure, I pay right along. I don't want anybody to support me.

"Q—I thought you told me a minute ago, that between the time that you were injured and the time you went back to work, you didn't pay anything?

"A—How was that?

"(Question read by the reporter.)

"A—No, I didn't say that.

"Q—you told me, before you were hurt, you were paying \$15.00 a month?

"A—That is what I said to you, because we can get along together. Then I pay \$15.00. After, I pay now \$20.00.

"Q—you told me you started paying \$20.00 when you went back to work for the French Sardine Company, isn't that [199] right?

"A—Sure.

"Q—you said something about your teeth being hurt. Tell me what happened to your teeth?

"A—My teeth, when I got that hit—I don't know myself. When I come to, the doctor told me, I remember he told me, 'You got false teeth.' I said, 'Yes.' Then this tooth split.

"Q—What happened to your teeth?

"A—I split it. When I got hit, I fell down and never know. The doctor make my stitches. Afterwards he found a split tooth.

"Q—Were they your own teeth or false teeth?

"A—False teeth.

"Q—Have you had them fixed?

(Deposition of Steve Ruljanovich.)

"A—Not yet.

"Q—They are still in your mouth?

"A—Yes. Excuse me.

"Q—So your lower denture is loose?

"A—Lower denture is loose.

"Q—Did your mouth bleed inside?

"A—Yes, I feel it kind of sore.

"Q—Did it bleed inside?

"A—No, I never know. When I come to that table where he made the stitches, he says, 'You got false teeth.' I says, 'Yes.' He took them out and found that split. [200]

"Q—They didn't bleed?

"A—No.

"Did any of the doctors look at your mouth?

"A—Sure.

"Q—They didn't give you any treatment for your mouth?

"A—No.

"Q—You haven't been to see a dentist?

"A—No, I never been to see a dentist.

"Q—Are you a member of any union down here?

"A—Yes, A. F. L., Cannery Workers Union.

"Q—Were you, at any time, a member of the Fishermen's Union?

"A—Yes, I have been.

"Q—You have been a member of the Fishermen's Union?

"A—Sure, because you can't fish.

"Q—You can't go out on a boat?

"A—Can't go fishing.

(Deposition of Steve Ruljanovich.)

"Q—Before May 4, you were a member, or on May 4, you were a member of the Fishermen's Union?

"A—Yes.

"Mr. Kappler: That is all."

Mr. Kappler: Mr. Fall suggested yesterday, your Honor, that he would be willing to stipulate that the remainder of the record, which was before the Industrial Accident Commission, might go into evidence, and I accept that stipulation, and offer herewith the remainder of the [201] certified copy of the record of all the proceedings before the Industrial Accident Commission of the State of California, in the matter of Steve Ruljanovich vs. Peter Cekalovich and others.

Mr. Fall: That was the understanding yesterday.

The Clerk: Respondents' and Claimants' Exhibit E.

[Note: Respondents and Claimants' Exhibit E, because of its voluminous character, is omitted here and inserted commencing at page 242 of the Reporter's Transcript of Testimony and Proceedings on Trial.]

Mr. Fall: That was our stipulation. That is the proceeding, in which we cited the case yesterday in the District Court of Appeals, with the exception that we did not give the court number.

Mr. Kappler: That is correct.

Mr. Fall: It is in the Advanced Sheets. I think it was two weeks ago. It is in the last couple of weeks. It came out in the Advanced Sheets.

The Court: The District Court of Appeals?

Mr. Fall: The District Court of Appeals.

Mr. Kappler: I will call Mr. Ruljanovich. [202]

STEVE RULJANOVICH,

called in rebuttal, having heretofore been duly sworn, testified as follows:

Direct Examination

Q. By Mr. Kappler: You went over to the warehouse in a little truck, didn't you?

The Court: Is this under 2055?

Mr. Kappler: Yes.

A. Yes, in the little truck.

Q. You remained outside the door until it was raised?

A. I been inside the door, and sat on the wharf, on the cement.

Q. I understand that, but before you got inside on the wharf, you were outside?

A. Yes, then I went inside.

Q. When did you go inside, after they raised the door up? A. Sure.

Q. Did you go inside with Mr. Muljat and others?

A. We was all bunched together.

Q. All bunched together?

A Bunched together then; three or four men; I don't know.

Q. So you all went in about the same time?

A. Yes.

Q. How long was it, Mr. Ruljanovich, between the time [203] that you went inside, and the time you got hit in the head?

A. Not very long; 20 or 25 minutes; something like that.

Q. About 20 or 25 minutes?

(Testimony of Steve Ruljanovich.)

A. Yes. I couldn't say exactly, but something like that.

Q. During all of that period you were sitting there or standing right there?

A. No, just sitting on the wharf, on the cement, close to the nets.

Q. You were looking out toward the door, were you?

A. We were sitting, a couple of fellows with me. We talk a little bit.

Q. You looked over, though, and you saw the net, didn't you, before you were hit? A. Yes.

Q. Before the accident you saw the net?

A. Yes.

Q. You saw the door? A. Yes.

Q. You saw the truck being backed in?

A. Yes, I see the truck a couple of times back and forth, because it was too close.

Q. You went back to work in July of this year?

A. Yes, sir, July.

Q. It is true, isn't it, that you worked at least 40 [204] hours almost every week from the time that you went back to work on July 17 up until on or about October 30th?

Mr. Fall: Counsel, we stipulated he worked those hours.

The Court: That was all stipulated, counsel. Unless it is preliminary to another question, there is no dispute about it. It is a part of the record.

Mr. Kappler: That is all.

(Testimony of Steve Ruljanovich.)

Cross Examination.

Q. By Mr. Fall: Mr. Ruljanovich after October 30th did you go back to work, or did you lay off for a while?

A. After October, when I worked that time, several other times, he told me, he told before, "Steve, you like to go?" "No, because I can't last more than eight hours." He says, "We short of men. You help me." Well, then I try. Then I work several times; other times, after that I feel so tired I couldn't last, so then I stay home for seven or eight days. So they started again and I tell the foreman I won't work any more. Other people work steady all the time, and don't feel it.

Q. You went back to work after seven or eight days?

A. Sure.

Q. So you have worked since October 30th except for about seven or eight days?

A. Sure.

Mr. Fall: That is all.

Mr. Kappler: No questions. The respondents rest.
[205]

The Court: Any rebuttal on the part of the libelant?

Mr. Fall: We have nothing further, your Honor.

The Court: Any further rebuttal?

Mr. Kappler: No rebuttal, your honor.

The Court: I will ask counsel to prepare a summary of what they contend the facts establish on their side; also a short memorandum of authorities to sustain their position. Ten, ten and five. The matter will be submitted. [206]

RESPONDENTS AND CLAIMANTS' EXHIBIT
NO. E.

Before the Industrial Accident Commission of the State of California.

Steve Ruljanovich, Applicant, v. Peter Cekalovich, Dominic Mratinich, Frank Muljat, as owners and operators of the Diesel Screw "Betsy Ross", Occidental Indemnity Company, a corporation, Defendants. Claim L.A. No. 62-423.

CERTIFICATION.

I, Frank J. Burke, Secretary of the Industrial Accident Commission, hereby certify that the attached is a full, true and correct copy of the record of proceedings had before the Industrial Accident Commission in the above entitled cause.

Attest my hand and the seal of the Industrial Accident Commission of the State of California.

(Seal)

Frank J. Burke
FRANK J. BURKE,
Secretary

Subscribed and sworn to before me this 8th day of November, 1943.

(Respondents and Claimants' Exhibit No. E.)

State of California
INDUSTRIAL ACCIDENT COMMISSION
119 State Building, Civic Center
San Francisco, California

Steve Ruljanovich Applicant vs. Peter Cekalovich,
Dominic Mratinich, Frank Muljat, Diesel Screw "Betsy
Ross" Defendant. Claim No. L.A. 62-423.

(Filed 1-21-43)

NOTICE OF HEARING OF APPLICATION FOR
ADJUSTMENT OF CLAIM.

The People of the State of California Send Greetings
to the Above Named:

You are hereby notified that an application to adjust
a claim for compensation (a copy of which is attached
hereto) has been filed in the office of the Industrial
Accident Commission of the State of California, ~~HH~~

Los Angeles

State Building, ~~Civic Center~~, ~~San Francisco~~, Califor-
nia. You are further notified that said application has
been set for hearing at 915 Jergins Trust Bldg., Long
Beach California February 10, 1943 at 10:30 A. M.
and that at said time and place the Industrial Accident
Commission of the State of California will proceed to
hear and dispose of the said application in the manner
prescribed by law.

Los Angeles

Dated at ~~San Francisco~~, California, January 21, 1943.

Witness:

INDUSTRIAL ACCIDENT COMMISSION.

Lane.

George W. Lane

By ~~Frank J. Burke~~

Assistant Secretary

(Respondents and Claimants' Exhibit No. E.)

Celia Sculnick certifies that as an employee of the Industrial Accident Commission she served the foregoing notice on the parties hereinafter mentioned, at the time set opposite their respective names, by depositing a copy of said notice, attached to a copy of the application therein mentioned, in a sealed envelope in the United States mail on said day, at San Francisco, California, with the postage thereon fully prepaid, and addressed to the said parties at their last known places of business or residence, as follows, to wit:

Names of Parties Served	Date of Service
Steve Ruljanovich, 642 W. 14th St., San Pedro	Jan. 21, 1943
Peter Cekalovich, Dominic Mratinich, Frank	Jan. 21, 1943
Muljat, Diesel Screw "Betsy Ross" (indi- vidually to: 642 W. 14th St., San Pedro, Calif.	
John H. Black, 742 Broad Ave., Wilming- ton, Calif.	Jan. 21, 1943
David A. Fall, 388 W. 7th St. San Pedro, Calif.	Jan. 21, 1943

(Signature) CELIA SCULNICK

(Respondents and Claimants' Exhibit No. E.)

Before the Industrial Accident Commission of the State of California.

Steve Ruljanovich, Applicant, vs. Peter Cekalovich, Dominic Mratinich, Frank Muljat, as Owners and Operators of the diesel screw "Betsy Ross", Occidental Indemnity Company, a corporation, Defendants. Claim No. L.A. 62-423.

(Filed 2-16-43)

REPORT OF HEARING.

This Cause came on regularly for hearing on the 10th day of February, 1943, at 10:30 A. M., at 915 Jergins Trust Building, Long Beach, California, before W. Bond, Referee.

Present:

Steve Ruljanovich, applicant.

David A. Fall, attorney for applicant.

J. L. Kearney, attorney for defendants.

W. S. Garrett, reporter.

Witnesses:

Steve Ruljanovich

Dinka Cekalovich

Exhibits:

Report of Dr. C. B. Courville, 1-31-43. Applicant's Exhibit 1

Medical record of defendants: Defendants' Exhibit 1

Dr. D. G. Dickerson, 1-9-43

Dr. E. L. Gillman, 6-15-42, 5-5-42.

(Respondents and Claimants' Exhibit No. E.)

Good Cause Appearing Therefor:

It Is Hereby Ordered that the name of the defendant employers herein be corrected to read Peter Cekalovich, Dominic Mratinich, Frank Muljat, as owners and operators of the diesel screw "Betsy Ross," and that the title be amended accordingly.

It Is Further Ordered that Occidental Indemnity Company, a corporation, be and it is hereby joined as a party defendant, and that the title be amended accordingly.

* * *

The Following Facts Are Admitted:

1. Steve Ruljanovich, age 59 years, was in the employ of the named defendants Peter Cekalovich, Dominic Mratinich, Frank Muljat, as owners and operators of the diesel screw "Betsy Ross", on or about May 4, 1942, as a seaman fisherman at Terminal Island, California.

2. That on said date the Occidental Indemnity Company, a corporation, was the insurance carrier for said employers.

3. On the above date the employee sustained an injury arising out of and occurring in the course of his employment substantially as alleged in the application.

4. Medical expense incurred by applicant to be assumed by the defendant according to fee rate schedule.

5. The actual earnings may be taken at this time as \$25 a week subject to later check-up.

6. No compensation paid.

(Respondents and Claimants' Exhibit No. E.)

Issues:

1. Jurisdiction
2. Nature and extent of disability.

* * *

Disposition:

Submitted.

* * *

L A 62-423

2-11-43

Before the Industrial Accident Commission of the State of California.

Steve Ruljanovich, Applicant, vs. Peter Cekalovich, Dominic Mratinich, Frank Muljat, as owners and operators of the diesel screw "Betsy Ross," Occidental Indemnity Company, a corporation, Defendants. Claim No. L.A. 62-423.

REPORT OF HEARING AND TRANSCRIPT OF TESTIMONY.

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Present:

Steve Ruljanovich, applicant.

David A. Fall, attorney for applicant.

J. L. Kearney, attorney for defendants.

W. S. Garrett, reporter.

(Respondents and Claimants' Exhibit No. E.)

Witnesses

	pages
Steve Ruljanovich	3 - 8
Dinka Cekalovich	9 - 12

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The Following Facts Are Admitted:

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2. That on said date the Occidental Indemnity Company, a corporation, was the insurance carrier for said employers.

3. On the above date the employee sustained an injury arising out of and occurring in the course of his employment substantially as alleged in the application.

4. Medical expense incurred by applicant to be assumed by the defendant according to fee rate schedule.

(Respondents and Claimants' Exhibit No. E.)

5. The actual earnings may be taken at this time as \$25 a week subject to later check-up.

6. No compensation paid.

Issues:

1. Jurisdiction.

2. Nature and extent of disability.

The Referee: Offered and submitted in evidence report of Dr. C. B. Courville dated January 31, 1943, as Applicant's Exhibit 1, and medical record of the defendants consisting of the report of Dr. D. G. Dickerson dated January 9, 1943, the reports of Dr. E. L. Gillman dated June 15, 1942, and May 5, 1942, as Defendants' Exhibit 1.

Transcript of Testimony

STEVE RULJANOVICH,

applicant, being first duly sworn, testified as follows:

The Referee: Just proceed, then, Mr. Fall.

Direct Examination

By Mr. Fall: Q Mr. Ruljanovich, where were you injured? That is, I understand it was some place over on Terminal Island. Whereabouts on Terminal Island was it?

A Terminal Island. It was the other side. You had to go on ferry.

Q Was it at a warehouse?

A Crescent Warehouse Company.

Q It was in one of their warehouses?

A Well, there was a net in it.

(Respondents and Claimants' Exhibit No. E.)

Q The place you were injured. You were injured at one of their warehouses?

A Yes.

Q And that warehouse was on Terminal Island?

A Yes.

Q And the warehouse was situated, was it, on the ground, or was it on the water?

A On the ground.

Q And what did you go to the warehouse for?

A We went to the warehouse to get the tuna nets to the boat, and (unintelligible).

Dinka Cekalovich: He said they were going to pick the net from the warehouse and put it on the truck and put it near the boat so they could work on the net.

By the Referee: Q In other words, you went to the warehouse to pick up this net?

A We don't start to use until we already get to work.

By Mr. Fall: Q Just answer the question. He said, you went to the warehouse to get the net?

A Yes.

By the Referee: Q That is the reason you went to the warehouse to get your nets?

A Yes.

Q What happened to you?

A I was inside there where I was about sixteen or seventeen feet from the door, then when we get ready to work, sometimes you see it is time to stretch them out. They fall down sixteen feet long. It hit top of my head.

By Mr. Fall: Q Then you were taken to the emergency hospital?

(Respondents and Claimants' Exhibit No. E.)

A Yes.

Q And now at the present time are you able to go back to work?

A No.

Q At the present time are you able to go back to work?

A No, because I feel dizziness and headache.

Q When do you get this dizziness?

A Dizziness I feel when I walk, when I try to sometime walk fast. Then I get headache. I have to stop just same like drunk man.

Q When you exert energy you get dizzy. Is that it?

A Sure.

Q Have you tried to do some work?

A Yes, I tried in my garden a little work. Then when I start I feel dizzy and headache sometime for ten or fifteen minute and I have to stop.

Q Sometimes you work for ten or fifteen minutes and then you have to stop?

A Sure.

Q Because of this dizziness?

A Yes.

Q Do you get headaches as a result of that or after that?

A Yes, after.

Q I think the question as to the matter of disability it pretty well covered in the medical reports.

The Referee: All right.

Cross-Examination

By Mr. Kearney: Q You had gone to work for the owners of the Betsy Ross the day before?

(Respondents and Claimants' Exhibit No. E.)

A The day before. They told me I go fishing with them.

Q And when you went after the net where were you going to bring the net?

A We bring the nets from truck to the boat.

Q Were you going to repair them there?

A No. They fixed them up already to go to tuna.

Q Had you worked for sometime before your injury?

A No, I just, first time when he told me.

Q You had not received any money?

A No.

Q Had you been working for sometime?

A No.

Q Or had you been off work?

A I used to be working to try to little exercise.

Q Before?

A Yes.

Q Had you been working a month before, two months or three months?

A I had been working cannery, French Sardine.

Q When did you quit working for the French Sardine?

A I didn't quit just the end of this month.

By the Referee: Q. End of what month?

A This month.

Q You have been working lately in the cannery?

A Before when I get a chance to go fishing been working in French Sardine seven years.

By Mr. Kearney: Q You hadn't worked for the French Sardine Company since February?

A No.

(Respondents and Claimants' Exhibit No. E.)

Q Of 1942?

A No, no.

Q You had been off about two or two and a half months?

A Yes.

Q And then you got this position with this boat?

A Sure.

The Referee: I don't know whether he is just saying yes.

By Mr. Kearney: Q You haven't done any work since you were hit on the head?

A No.

Q Did you ride over to the warehouse on a truck or was there a truck over there?

A We ride in the truck, yes, sir.

Q Did you leave your house and go over to get the net or did you come down to the boat and then go over to get the net?

A We left the house. We went on the boat for a half hour. We work something on the rope put on the side of the boat, the deck. Then we went to the boat over there across the bay, then, afterwards, with the truck.

Q How long would it have been before the boat went out to sea, a week or ten days?

A No.

Q If you know.

A You mean?

By Mr. Fall: Q After the accident how long was it before the boat went out?

By Mr. Kearney: Q Do you know how long it was before the boat went out?

(Respondents and Claimants' Exhibit No. E.)

A Well, I got hurt.

Q Yes.

A Yes, maybe a month, twenty days, because they have to repair that net.

Q And fix up the boat otherwise?

A Yes, sir.

Q Then the boat went out to sea about twenty days after you were injured?

A Yes, I think so.

Mr. Kearney: And that is all I have of this witness.

Mr. Fall: That is all the applicant has.

The Referee: You might call this lady just a moment; just change seats.

Q Is this your father?

Dinka Cekalovich: Yes.

DINKA CEKALOVICH,

a witness, being first duly sworn, testified as follows:

Direct Examination

By the Referee: Q What is your name?

A Dinka Cekalovich.

Q What relation are you to Steve?

A He is my father.

Q Do you live in the vicinity where your father lives?

A Yes, we live in the same house. It is our, really mine and my husband.

Q And your father makes his home with you?

A Yes, my mother and father.

Q You see him all the time?

A Oh, yes.

(Respondents and Claimants' Exhibit No. E.)

Q Before he made this connection with the fishing boat, what was he doing? How did he earn his living?

A Until about seven or eight years ago he was fishing and then for six or seven years he was working in the cannery.

Q And that was the French Sardine cannery?

A Yes.

Q Before his injury how long had it been since he had worked in the cannery?

A About two months, I think.

Q He did loafing about two months?

A No, he didn't because there was no work at that time.

Q There were no sardines?

A There were no sardines.

Q And then how long had it been since he had made this connection to go fishing again before his injury?

A I beg pardon.

Q When was it he contacted these Betsy Ross boat people?

A That was—

Q When were those arrangements made?

A That was my husband, Peter Cekalovich. I wasn't there because I went to put the children in the bed, and I have two small children. My husband told me afterwards he asked my father if he wants to go fishing with them and my father said yes, he would go. He said, "There is no work in the cannery, it looks like it is going to be a pretty good year and I will go fishing with you."

Q And those arrangements were made about how long before he got hurt?

(Respondents and Claimants' Exhibit No. E.)

A The day before.

Q Just the day before?

A Because they didn't start yet.

Q Was it the understanding so far as you know that your father was to help him get the boat ready?

A Yes, like all the rest of the crew.

Q Your husband follows the fishing trade, does he?

A Yes.

Q He is a fisherman?

A Yes, he is like a skipper.

Q Is he part owner of this boat?

A Yes.

Q And that is the way he earns his living?

A Yes.

Q Now, does your father seem to be getting better?

A He is improving but he still complains about headaches and dizziness.

Q Is your husband operating the boat now?

A Yes, he is.

Q With this war, does he still go out fishing?

A Yes, maybe for a week or so on sardines.

Q Do you think your father is now able to accept employment out on the boat?

A I don't think he is.

Q You don't think he is well enough yet?

A No.

Q When does your father expect to be able to go back fishing again?

A The way he said, I don't know because he complains. One day when he start to do some work in the garden he complains about dizziness and headaches, and

(Respondents and Claimants' Exhibit No. E.)

the fishing is hard work. He is afraid. He can't take no chances.

Q How about the cannery, is that working now?

A The canneries are working. They have been working all summer and overtime but the work he was doing before it was hard work, always bending up and down.

Q Doing what?

A Doing cans, putting them in the cases.

Q Packing cans in cases?

A No, he is not packing. He is—

By Mr. Fall: Q Feeding?

A Cans, putting in the cases and putting in the big boxes.

Q Big basket?

A Of cans and he was putting them in the boxes and always going up and down. I was there lots time and saw him work.

By the Referee: Q. That is fairly heavy work?

A Yes.

Q Is there any work over there he thinks he could do now?

A I don't think so.

Q He hasn't gone over and tried?

A He has been trying around the house, around the yard.

Q You think maybe he is getting gradually better?

A I think he is.

Mr. Fall: I think he is too. He told me he is getting better.

The Referee: Would you like to ask this lady anything, Mr. Kearney?

(Respondents and Claimants' Exhibit No. E.)

Mr. Kearney: I have no further questions.

Mr. Fall: I have no questions.

The Referee: All right. We will mark the case submitted at this time.

CERTIFICATION.

I, W. S. Garrett, hereby certify that I was present at the hearing of the matter as entitled on the first page hereto; that I took shorthand notes of the proceedings had; that I thereafter transcribed said notes into long-hand writing; that the foregoing pages, number one to twelve, inclusive, contain a full, true and correct statement of the proceedings had and testimony taken thereat.

W. S. Garrett

Reporter.

Los Angeles, California, April 2, 1943.

"Applicant's Exhibit 1"

COLLEGE OF MEDICAL EVANGELISTS

Los Angeles, California

Department of Neurology

Name Ruljanovich, Steve

Case No. 1840

Address: 642 West 14th Street, San Pedro, California

60 Male Caucasian Yugoslavian Cannery Worker
Married

Referred by: E. S. Cassady, M. D., 844 South Pacific Avenue, San Pedro, Calif.

History

Dr. Courville

January 31, 1943

Informant:

The patient.

(Respondents and Claimants' Exhibit No. E.)

Chief Complaints:

1. Dizziness and instability following an injury to the head in May, 1942.
2. Frequent attacks of headache at the site of a scalp laceration received in the injury of May, 1942.

History of Present Complaints:

Previous Relevant History:

Prior to the accident the patient was in good health, as far as he knows, and had no complaints or illness.

Onset:

On May 4, 1943, while getting ready to go to work, a 4 x 4 timber 16½ feet long fell from above, striking the patient on the top of the head. He received a contusion and laceration of the occipito-parietal scalp and was dazed by the blow, but apparently was not rendered completely unconscious.

Course:

The patient was taken to the hospital almost immediately following the accident, where he received first aid and attention to the scalp wound. He vaguely remembers the incidents of the first day, but it all seems "like a dream" to him. He remained in the hospital for a period of seven days and then remained in bed at home for an additional six or seven days. After getting up and around again he was unable to resume his work because of the exaggeration of symptoms provoked by the slightest exercise. He has apparently made some improvement, but continues to have attacks of dizziness and frequent headaches, and is still unable to work.

(Respondents and Claimants' Exhibit No. E.)

Symptoms in Detail:

1. The dizziness and unsteadiness. These symptoms have been present since the accident on May 4, 1942. They are persistent, and the patient states that they prevent him from working. The dizziness is not rotatory. It is more a feeling of unsteadiness or "light-headedness" or faintness that occurs periodically and is aggravated by exercise and especially by bending over. Changes in the weather likewise make the symptoms worse. Occasionally he is awakened from sleep by the dizziness, and if he gets up out of bed there will be a "grabbing pain" in his head.

2. The headache. The patient has had rather frequent attacks of headache since the injury. The pain is confined to the vertical region of the head in the area of the scalp laceration, and it is described as a sharp "grabbing" type of pain which is aggravating but not severe.

Physicians Seen:

1. Dr. John Patrick.
2. Dr. R. W. Stellar.
3. Dr. Dunbar.
4. Dr. E. S. Cassady.

Treatment:

The patient received immediate attention to his injury in the San Pedro Hospital, but has had no subsequent treatment.

Present Condition:

At the present time the patient is able to get around, but must refrain from all exercise. As long as he

(Respondents and Claimants' Exhibit No. E.)

remains quiet he is quite free from symptoms, except that he is occasionally awakened out of sleep by dizziness and headache.

Past History:

The patient was born in Yugoslavia, where he lived 27 years. He lived in Washington nine years, and has been in California for 24. Until the time of his injury he was employed in a cannery in San Pedro. He has been married for thirty-four years to Mileza Ruljanovich.

The patient states that he uses no alcohol and no tobacco, and at present uses no coffee or tea.

He has had tonsillitis, influenza and high blood pressure. He had his tonsils removed in 1916, but has had no other operations. On May 4, 1942, he sustained an injury to the head by a falling piece of timber. He has been unable to work since then.

His father died at 45 of pneumonia. His mother died at 85 of old age. He has a brother and a sister living. He knows nothing of the family history, since all his relatives are in Yugoslavia.

Examination

Status Praesens:

The patient is a well developed, well nourished man of 60 who presents no outward abnormal neurological manifestations.

The head is of normal size and shape. There is no tenderness of the scalp or evidence of increased tension. There is an old linear scar extending from the vertex toward the frontal region. The ears, nose and throat are normal. The lungs and heart are normal. The

(Respondents and Claimants' Exhibit No. E.)

blood pressure was 158/98. The brachial arteries are tortuous and pulsating. The radial arteries are firm and sclerotic. The abdomen is soft and not tender. The extremities are normal.

Cranial Nerves:

I. Olfactory—No subjective loss or impairment of sense of smell. No parosmia. Patient is able to identify clearly test odors.

II. Optic—The patient wears glasses for reading only. There have been no recent changes in vision. The fields are normal. The optic disks are well outlined. Cupping is present. The vessels are normal.

III, IV, VI. Oculomotor, Trochlear and Abducens—No double vision. The pupils are round, but slightly unequal in size, the left being larger than the right. The pupils react to light but the reaction is not maintained well. There is no nystagmus, no exophthalmos or enophthalmos.

V. Trigeminal—No subjective pain or numbness of the face. No disturbance of sensation as determined by usual methods. No weakness of the muscles of mastication.

VII. Facial—No subjective weakness of the face. No secretory disturbance or subjective disturbances of taste. Sensation about external ear is normal. No objective weakness of facial muscles.

VIII. Acoustic—Auditory Division—There has been no impairment of hearing. The watch is *hear* at 16" right and left. The Weber is not lateralized. AC is greater than BC right and left.

Vestibular Division—There has been no ataxia or vertigo.

(Respondents and Claimants' Exhibit No. E.)

IX, X. Glossopharyngeal and Vagus—No dysarthria or dysphagia. No nausea or vomiting, projectile or otherwise. No deviation of uvula. Movements of palatal curtain equal right and left. Pharyngeal reflexes normal.

XI. Accessory—No weakness or atrophy of sternomastoid or trapezius muscles.

XII. Hypoglossal—No deviation, atrophy or tremor of the tongue.

Motor System:

The posture and gait are normal. There is no evident disturbance of the pyramidal system. The grips of the hands are 75 kg. on the right and 60 kg. on the left.

The deep reflexes are all present and equal on the two sides, but iniversally hyperactive. There are no pathological reflexes. The superficial abdominal and cremasterics are present and equal right and left.

There is no history of a disturbance of skilled movements or stereotyped movements in the present illness. The musculature of the extremities showed no spasticity. None of the special signs referable to the extrapyramidal system are noted.

No tremors, rigidity or other signs of the parkinsonian syndrome are present to indicate a lesion of the basal ganglia. No athetosis or choreiform movements were observed.

Cerebellum:

The patient presents no history of ataxia or unsteadiness of gait. On examination there was no tendency to walk with a broad base, and no unsteadiness of gait

(Respondents and Claimants' Exhibit No. E.)

was evident. No evidence of disorders of movement such as dysmetria, ataxia, decomposition of movement, disturbances of rate or force or adiadokokinesia were present. No hypotonia, tremor or nystagmus was found.

Sensory System:

General Senses:

There has been no subjective history of disturbances of sensation, and on examination all sensory modalities—touch and pressure, pain and temperature, vibration and position sense—were found to be intact. No subjective complaints suggestive of disease of the thalamus were present in the history, and on examination none of the special symptoms or signs indicative of a lesion of the parietal cortex were in evidence.

Olfactory and Gustatory Senses:

There is no subjective history of impairment or loss of olfactory or gustatory acuity, nor of suggestive parosmia or hallucinations noted. On examination the patient was able to detect test odors, and the taste faculty seemed to be intact. There was no history of dreamy states.

Visual System and Occipital Lobe:

The patient wears glasses for reading only. There have been no recent changes in vision. The fields are grossly normal. The pupils are round, unequal in size. They react to light and the reaction is poorly maintained. There is nothing to indicate any disturbance of the extraocular motor mechanism.

Auditory System:

There has been no tinnitus and no impairment of hearing. The watch is heard at about 16" right and

(Respondents and Claimants' Exhibit No. E.)

left. The Weber is not lateralized. AC is greater than BC right and left.

Vestibular System:

Dizziness of the type to suggest involvement of the vestibular nerve or end organ was not complained of. There was no record of ataxia. Nystagmus or past-pointing was not evident on examination. There is nothing to suggest involvement of the cerebellum or of the cortex of the temporal lobe.

Meningeal Signs:

There is no history of symptoms to suggest meningeal irritation, and on examination no stiffness of the neck, no Kernig or Brudzinski signs were evident.

Apraxia, Acnosia, Aphasia:

No special disturbances of motor function were evident on examination to suggest the presence of apraxia. There was no history of failure to recognize common objects or symbols by sight. The patient is capable of understanding spoken language. There is no history to suggest and no findings to indicate motor or sensory aphasia.

Mental Status:

The patient does not present any abnormalities of appearance or behavior. There is no evident disturbance of the emotional state. Judgment and insight are good. There was no evidence of any of the organic syndromes of the frontal lobe.

Spinal Cord and Peripheral Nerves:

On examination there was nothing to suggest any involvement of the spinal cord or peripheral nerves.

(Respondents and Claimants' Exhibit No. E.)

Autonomic Nervous System:

A review of the patient's history fails to disclose any symptoms suggestive of an imbalance of the peripheral sympathetic or parasympathetic systems and no symptoms or signs were suggestive of a disturbance of hypothalamic function. None of the specific hypothalamic syndromes were evidenced either subjectively or on examination. No autonomic symptoms were discovered which might indicate cortical disturbance in this sphere.

Summary of the positive findings:

Subjective Symptoms:

1. Dizziness and instability following an injury to the head on May 4, 1942.
2. Frequent attacks of headache at the site of a scalp laceration received in the injury of May 4, 1942.

Objective Symptoms:

1. The patient is a well developed, well nourished man of 60 who does not present any evident outward neurological abnormalities.
2. There is a linear scar of the vertical scalp.
3. The optic disks are well outlined. The cups are present. There is no papilledema.
4. The pupils are round; the left is larger than the right. They react rather poorly to light and accommodation.
5. The deep reflexes are all present, moderately hyperactive and equal right and left. There are no pathological reflexes.
6. There is moderate generalized arteriosclerosis. Blood pressure was 158/98.

(Respondents and Claimants' Exhibit No. E.)

Discussion:

The subjective manifestations presented by the patient are fairly typical of the vasomotor instability that is so frequently associated with the post traumatic state. The mechanism of the injury—a falling object striking the head while stationary—was of a nature to produce a definite concussion, but most likely nothing more serious than this.

Tentative Diagnosis:

Commotio cerebri. Post traumatic vasomotor instability.

Advise:

1. Prostigmine bromide, 15 mg. three times a day.

Cyril B. Courville, M. D.

“Defendants’ Exhibit 1”

DORRELL G. DICKERSON, M.D., F.A.C.S.

1401 So. Hope Street

Los Angeles, California

January 9th, 1943.

Ruljanovich, Steve.

642 - 14th Street, San Pedro, California.

Age:

59 years. Married—father of one child.

Employer:

French Sardine Co., San Pedro, Calif.

Occupation:

Laborer-fisherman.

Date injured: 5/4/42.

Interval History:

Has not been working since he was seen here last—8/1/42. No work for wages—no home chores. Has

(Respondents and Claimants' Exhibit No. E.)

been to see Dr. Cassidy—about one month ago at San Pedro. Progress remains about the same.

Complaints:

"Dizziness—spine, behind—can't touch it—at times because it is sore. When I walk I get a grab in my head—this is like ants in my head. I don't feel like working because of the dizzy head and the sore spine. Don't sleep very good because the grabbing in my head makes me nervous and I have to get up at night. My appetite is not so bad—medium. Weight is 163 lbs. Bowels at times constipated."

Examination:

Steve Ruljanovich is a short, stocky man of swarthy complexion. Height 5' 5"—weight 165 lbs. Head normal in shape and size—scar, irregular—at vertex— $\frac{3}{4}$ " lateral to the midline— $2\frac{1}{2}$ x 3" long. Healing has been normal. Ears negative. Tonsils have been removed. Mouth clean—partially edentulous—lower central incisors need attention—some gingival irritation present. Neck is normal. Tender on 7th. cervical spine. No spasm or limitation in motion. No crepitus. Thyroid not palpable. Post cervical lymph nodes not enlarged. Heart tones moderately accentuated. No murmurs or thrills. Blood pressure 150 over 80. Pulse normal rate and quality. Peripheral vessels palpable.

Abdomen:

No complaints. Extremities are anatomically normal.

Neurological:

Olfactory sense normal.

(Respondents and Claimants' Exhibit No. E.)

Vision:

Marked myopic state present—visual acuity—OD. 20/40 — OS. Fundi negative. Ocular movements normal. No diplopia. No nystagmus. Face is symmetrical. Trifacial normal. Tongue in the midline. Bite equal.

Auditory:

AC. greater than BD. Weber referred. Shoulders of equal strength and tone. Deep reflexes are all present, equal and about one plus in arms and shoulders. Superficial reflexes present and normal. No pathological reflexes. No clonus. Sensory examination negative. Motor tests: no atrophy—no weakness. Coordination normal. Cerebellar tests negative. No tremors. Romberg negative. Gait natural. Cerebral lobes: frontal, normal mental state. Temporal, speech normal. Parietal, normal. Occipital, visual fields normal on confrontation tests. Re-check on Romberg test: sways in this posture.

Conclusions:

This man complains of vertigo especially when stooping or bending forward. He also states that there is a crawling sensation in his forehead and tenderness over the 7th cervical spine. There are no signs of brain injury but his symptoms are those of *commotio cerebri*.

The nature of his injuries was such that it is reasonable to expect such symptoms, especially in one of his age and with high blood pressure (elevated).

I do not think he can work as a fisherman at present because if he should become dizzy he runs a good chance of falling and hurting himself. These cases are usually

(Respondents and Claimants' Exhibit No. E.)

chronic and where the blood pressure is up, symptoms are worse and run a long course.

Advise treatment for high blood pressure—small doses of phenobarbital should help.

Disability: temporary total—duration undetermined.

DORRELL G. DICKERSON, M.D.

dgd.jed.

"Defendants' Exhibit 1"

June 16, 1942

Mr. Murray H. Roberts
Citizens National Bank Bldg.,
Wilmington, California

Re: Steve Ruljanovich
Emp: Peter Cekalovich (Betsy Ross)
Inj: May 4, 1942

Dear Mr. Roberts:

Pursuant to your request I examined the above captioned patient on June 15, 1942 here in this office.

History of injury:

On the 4th day of May, 1942 at about 9:30 in the morning this patient was struck on the head by a 6 x 6 timber which fell from above. He was brought here and first-aid was rendered him by me. Subsequently to this he was hospitalized in the San Pedro Hospital where he was treated by the U. S. Public Health Service.

Present complaints:

1. Dizziness. This is occasional and more marked on change from the horizontal to the vertical position such as arising from bed in the morning.

(Respondents and Claimants' Exhibit No. E.)

2. Stiffness of the neck.

3. Morning headaches which are relieved by capsules which he is taking at the present time.

Personal history:

Patient is a white male, age fifty-nine, 5' 6" in height, 155 lbs. weight, blue eyes, gray hair, married and has one child a daughter, age thirty-two.

Past history:

1. Medical: Pleurisy, five or six years ago. Tonsillitis, twenty-five years ago.

2. Venereal diseases are both denied.

3. Surgical: T. & A. twenty-five years ago.

4. Traumatic: He states he had had no previous accidents or broken any bones.

Physical examination:

Examination is that of a well developed man about fifty-nine years of age who does not appear to be acutely ill at this time.

Head: Hair is plentiful, slightly gray. Scalp well nourished. There is a well healed, four inch laceration of the scalp beginning in the mid parietal region and running anterior to the mid frontal region. This is all within the hair line.

Neck: There are no palpable glands. The thyroid gland is not palpable.

Eyes: Pupils are equal and react to light and accommodation. There is no nystagmus present. His vision is 20/40 bilaterally and he wears glasses for reading.

Nose: Septum in the mid line. There is no engorgement of the nasal mucosa.

(Respondents and Claimants' Exhibit No. E.)

Mouth: There is a full denture above and a partial one below. The remaining lower teeth are carious.

Throat: The tonsillar fossa is slightly injected. The tonsils have been removed.

Ears: Both auditory canals are filled with cerumen. The drum heads appear normal.

Chest: The chest is symmetrical throughout. Percussion note is normal. Breath sounds are clear throughout. There are no rales heard.

Heart: The cardiac borders are within normal limits. The sounds are equal and regular. The pulse rate is 88. There are no murmurs. Blood pressure is 140/78.

Abdomen: The abdomen is symmetrical and scaphoid. There are no areas of tenderness, masses or tumors palpated.

Back: Cervical, dorsal and lumbar spine normal throughout.

Inguinal regions: The external, inguinal rings are tight on both sides, and there are no impulses felt on coughing or straining.

Reflexes: Reflexes are physiological throughout. The Romberg is negative.

Discussion:

It is the writers' opinion that this patient sustained a severe contusion to his head with moderate cerebral concussion, and a four inch laceration of the scalp for which he received adequate treatment in the hospital. He has been discharged from the hospital and has been reporting to Dr. Petrich of the U. S. Public Health Service at the hospital at two week intervals. The last time he saw Dr. Petrich was about two weeks ago at

(Respondents and Claimants' Exhibit No. E.)

which time the doctor informed him that he did not think he needed further treatment, and to only return for treatment if he had any trouble.

The present symptoms of dizziness and headache are all residual from his moderate cerebral concussion. These are, no doubt, disabling at the present time, but I do not believe this disability will run more than two to three weeks further, and at that time this patient should be able to return to all his usual duties concerned with his employment. There should not be any permanent effects from this injury.

Yours very truly,

R. W. STELLAR, M.D.

By E. L. GILLMAN, M.D.

ELG:JB

"Defendants' Exhibit 1"

R. W. STELLAR, M.D., F.A.C.S.

1019 Avalon Boulevard

Wilmington, Calif.

May 5, 1942

Mr. Murray Roberts

742 Broad Avenue

Wilmington, California

Re: Steve Ruljanovich

Emp: Peter Cekalovich

Inj: May 4, 1942

Dear Mr. Roberts:

I first saw the above captioned patient on May 4, 1942. He states that he was employed for the day by

(Respondents and Claimants' Exhibit No. E.)

Mr. Peter Cekalovich of the "Betsy Ross" and that he was standing on the dock of the Crescent Wharf and Warehouse Co., getting ready to work, when a 6 x 6 timber fell from above striking him on the top of the head. Fellow workers state he was rendered unconscious and was so for approximately two minutes. He complains of no other injury.

Injuries consist of contusion of the occiput, 7 inch laceration (scalp), and a moderate cerebral concussion. X-rays taken of the skull were negative for fractures. Treatment consisted of suture of the laceration. The patient was sent to the San Pedro Hospital to be taken care of by the Public Health Authorities.

It is the writer's opinion that this man sustained severe contusion of the occiput with moderate cerebral concussion. I would estimate that this man would be confined to the hospital for a period of three to four weeks and will be totally disabled for a period of three to four months. Of course, you understand that this disability is very hard to determine since I have seen the man only once while rendering first aid and cannot estimate his progress in the hospital.

Yours very truly,

R. W. STELLAR, M.D.

By E. L. GILLMAN, M.D.

ELG:MP

(Respondents and Claimants' Exhibit No. E.)

Before the Industrial Accident Commission of the State of California. Claim No. L. A. 62-423.

Steve Ruljanovich, Applicant, vs. Peter Cekalovich, Dominic Mratinich, Frank Muljat, as owners and operators of the Diesel Screw "Betsy Ross," Occidental Indemnity Company, Defendants.

(Filed 2-25-43)

FINDINGS AND AWARD.

David A. Fall attorney for applicant.

J. L. Kearney attorney for defendants.

An application for adjustment of claim for compensation having been filed herein, and all parties having appeared, and the matter having been regularly submitted for decision, W. Bond, Referee, makes his Findings and Award as follows:

Findings of Fact.

1. Steve Ruljanovich, applicant, while employed as a seaman fisherman, at Terminal Island, California, on or about May 4, 1942, by Peter Cekalovich, Dominic Mratinich and Frank Muljat, as owners and operators of the diesel screw "Betsy Ross," sustained injury arising out of and occurring in the course of said employment when he was struck on the head by a timber.

On said date said employer's insurance carrier was Occidental Indemnity Company, a corporation, and both employer and employee were subject to the provisions of the Workmen's Compensation, Insurance and Safety Laws of the State of California.

2. Said employee at the time of the injury was not engaged in work in connection with his occupation as

(Respondents and Claimants' Exhibit No. E.)

seaman and said injury did not occur on a vessel or on navigable waters outside of the State of California but within the boundaries of the State of California, and therefore this Commission has jurisdiction in this proceeding.

3. Said injury caused temporary total disability from May 4, 1942 to and including February 10, 1943 and indefinitely, entitling the employee to \$15.44 a week during said time, less the waiting period of seven days. The foregoing weekly benefit is based upon wages of \$25.00 a week.

4. Applicant's attorney is entitled to a lien against unpaid compensation, for the reasonable value of his services, in the sum of \$35.00.

Award.

Award Is Made in favor of Steve Ruljanovich, applicant, against Occidental Indemnity Company, a corporation, of the sum of \$15.44 a week, beginning May 12, 1942 and continuing until the termination of disability or the further order of this Commission, less the sum of \$35.00 payable to David A. Fall, as attorney's fee.

It Is Ordered that the employers be and they are hereby relieved from liability and dismissed herefrom.

W. BOND

Referee, Industrial Accident Commission

Dated at Los Angeles California

Feb 25 1943

(Seal)

WB:EA

LA 62-423

(Respondents and Claimants' Exhibit No. E.)

Before the Industrial Accident Commission of the State of California. Claim No. L. A. 62-423.

Steve Ruljanovich, Applicant, vs. Peter Cekalovich et al., Defendants.

(Filed Feb. 25, 1943)

CERTIFICATE OF SERVICE

State of California, County of Los Angeles—ss.

Emma S. Hunt certifies that as an employee of the Industrial Accident Commission, she did on Feb. 25, 1943, serve

Findings and Award

in the above entitled proceeding now pending before the Industrial Accident Commission of the State of California, on each of the parties hereinafter named, by depositing said copies in sealed envelopes, with the postage thereon fully prepaid, in the United States mail in the County of Los Angeles, State of California, on said day addressed to each of said parties at his last known place of business or residence, as follows:

Steve Ruljanovich, 642 W. 14th St., San Pedro.

David A. Fall, 388 W. 7th St., San Pedro.

Peter Cekalovich, Dominic Mratinich & Frank Muljat, 642 W. 14th St., San Pedro.

Occidental Indemnity Co., 726 Standard Oil Bldg., L. A.

Att. J. L. Kearney

S F

Signature

EMMA S. HUNT

Dated at Los Angeles California

Feb 25, 1943

(Respondents and Claimants' Exhibit No. E.)

Before the Industrial Accident Commission of the State of California. Claim No. L. A. 62-423

Steve Ruljanovich, Applicant, vs. Peter Cekalovich, Dominic Mratinich, Frank Muljat, as owners and operators of the Diesel screw "Betsy Ross" and Occidental Indemnity Company, a corporation, Defendants.

(Filed 3/17/43)

PETITION FOR REHEARING

Comes Now Occidental Indemnity Company, a corporation, one of the defendants above named, and hereby petitions your Honorable Commission for a rehearing of the above entitled cause upon the following grounds, to-wit:

1. That the Commission acted without or in excess of its powers.
2. That the evidence does not justify the findings of fact.
3. That the Commission is without jurisdiction.

Statement of Facts

Steve Ruljanovich, applicant herein, was employed as a seaman fisherman on or about May 4th, 1942, by the defendant employer herein to work on the tuna boat "Betsy Ross." On said date while in the act, with other members of the crew, of obtaining the ships tuna nets from the Crescent Warehouse, approximately one mile from the boat dock, said Steve Ruljanovich sustained injury arising out of and during the course of his employment as a seaman. These nets were to be taken directly to the tuna boat "Betsy Ross."

(Respondents and Claimants' Exhibit No. E.)

Defendant's Contention

It is your petitioning defendant's contention that by virtue of the facts stated above the sole and original jurisdiction of the injury sustained by Mr. Ruljanovich rests under the Jones Act in the United States District Court.

Argument

The applicant herein, subsequent to decision by the Industrial Accident Commission, has filed an action in the United States District Court, being No. 26930C entitled *Steve Ruljanovich vs. Peter Cekalovich, Dominic Mratinich, Frank Muljat*, as owners and operators of the Diesel screw "*Betsy Ross*." This action is based on "libel in rem and in personam" for maintenance and cure for injuries suffered in the course of his service to his vessel, the "*Betsy Ross*," even though those injuries were sustained on land.

While originally there was a question of the jurisdiction of the District Court of the United States of injuries of seamen suffered while on land although in the service of their vessels, the jurisdiction is now undisputed and supported by the case of *Daniel O'Donnell vs. Great Lakes Dredge and Dock Company*, 87 L. Ed. advance opinions 456. In that case the petitioner was a deckhand on the vessel "*Michigan*" engaged in transporting sand over the navigable waters of Lake Michigan. While said vessel was at dock the petitioner was ordered to go ashore and assist in the repair of a gasket connection used to discharge cargo. While so engaged the alleged negligence of a fellow employee caused a heavy counter weight to fall on petitioner causing the

(Respondents and Claimants' Exhibit No. E.)

injuries of which he complained. Action was brought in the District Court of the United States for the Northern District of Illinois, Eastern Division, under the Jones Act, for personal injuries, which court dismissed the seaman's action but granted an award for wages. On writ of certiorari to the United States Circuit Court of Appeals the judgment of the District Court was modified, allowing an additional award for maintenance and cure but holding that no recovery could be had under the Jones Act for injury to a seaman not occurring on navigable waters. The case was presented to the Supreme Court of the United States on the question of "whether a seaman injured on shore while in the service of his vessel is entitled to recover for his injuries in a suit brought against his employer under the Jones Act." The decision answers this question in the affirmative, reversing the action taken by the United States Circuit Court of Appeals, stating as follows:

"The right of recovery in the Jones Act is given to the seaman as such, and, as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends not on the place where the injury is inflicted but on the nature of the service and its relationship to the operation of the vessel plying in navigable waters. See *Waring v. Clarke*, 5 How (US) 441, 12 L. ed. 226, and *New England Mut. M. Ins. Co. v. Dunham*, 11 Wal. (US) 1, 20 L. ed. 90, *supra*.

It follows that the Jones Act, in extending a right of recovery to the seaman injured while in the service of his vessel by negligence, has done no more than supplement the remedy of maintenance and cure for injuries suffered by the seaman, whether on land or sea, by giv-

(Respondents and Claimants' Exhibit No. E.)

ing to him the indemnity which the maritime law *afforded* to a seaman injured in consequence of the unseaworthiness of the vessel or its tackle." 87 L. ed. 456 at 460.

Wherefore, petitioner respectfully contends that finding No. 2 of the findings and award issued February 25, 1943, by your Honorable Commission is not supported by the evidence and that the evidence decisively discloses that your Honorable Commission has no jurisdiction over the subject matter herein.

Petitioner respectfully submits that the findings and award are not in harmony with the facts and testimony and prays that the award be set aside and a rehearing granted.

Respectfully submitted,

J. L. KEARNEY and

HERBERT S. MCCARTNEY, JR.

HERBERT S. MCCARTNEY, JR.

Attorney for Defendants

cc mailed to:

David A. Fall, Esq.

388 W. 7th Street

San Pedro, California on 3/17/43.

State of California, County of Los Angeles—ss.

Herbert S. McCartney, Jr. being by me first duly sworn, deposes and says: that he is the attorney for the Occidental Indemnity Company, one of the defendants in the foregoing and above entitled action; that he has read the foregoing petition for rehearing and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are

(Respondents and Claimants' Exhibit No. E.)

therein stated upon his information or belief, and as to those matters that he believes it to be true, and as such attorney is entitled to make this verification on and behalf of said Occidental Indemnity Company.

HERBERT S. McCARTNEY, JR.

HERBERT S. McCARTNEY, JR.

Subscribed and sworn to before me this 17th day of March, 1943.

(Seal)

A. J. WALKER,

Notary Public in and for the County of Los Angeles,
State of California.

My Commission Expires Aug. 5, 1945.

Law Office

J. L. KEARNEY

605 West Olympic Boulevard

Los Angeles, California

March 17, 1943

Industrial Accident Commission

903 State Building

Los Angeles, California

Re: Steve Ruljanovich vs. Peter Cekalovich, et al

L. A. Claim No. 62-423

Gentlemen:

Enclosed please find petition for rehearing in the above captioned matter. We enclose also for your convenience Law. ed. Advance Opinions, 1942-1943, Vol. 87, No. 8, containing the cited case at page 456 thereof.

Very truly yours,

(Signed) HERBERT S. McCARTNEY, JR.

HSMcC:jr

Enc.

(Received 3/17/43)

(Respondents and Claimants' Exhibit No. E.)

Before the Industrial Accident Commission of the State of California. Claim L. A. No. 62-423.

Steve Ruljanovich, Applicant, vs. Peter Cekalovich, Dominic Mratinich, Frank Muljat, as owners and operators of the Diesel Screw "Betsy Ross," Occidental Indemnity Company, a corporation, Defendants.

(Filed 4-7-43)

ORDER DENYING PETITION

The record herein having been reviewed and no good cause for rehearing having been shown by the Petition for Rehearing filed herein by defendant Occidental Indemnity Company, a corporation, on March 17, 1943;

It Is Ordered that said Petition be and it is hereby denied.

INDUSTRIAL ACCIDENT COMMISSION OF
THE STATE OF CALIFORNIA

PAUL SCHARRENBURG
A. WATCHMAN
J. C. GARRISON

Commissioners.

Dated at Los Angeles California

Apr 7 - 1943

(Seal)

CHMcC/os

(Respondents and Claimants' Exhibit No. E.)

Before the Industrial Accident Commission of the State of California. Claim No. L. A. 62 423.

Steve Ruljanovich, Applicant, vs. Peter Cekalovich, Dominic Mratinich, Frank Muljat, as owners and operators of the Diesel Screw "Betsy Ross," Occidental Indemnity Company, a corporation, Defendants.

(Filed 4-7-43)

CERTIFICATE OF SERVICE

State of California, County of Los Angeles—ss.

Emma S. Hunt certifies that as an employee of the Industrial Accident Commission, she did on Apr. 7, 1943 serve

Order Denying Petition

in the above entitled proceeding now pending before the Industrial Accident Commission of the State of California, on each of the parties hereinafter named, by depositing said copies in sealed envelopes, with postage thereon fully prepaid, in the United States mail in the County of Los Angeles, State of California, on said day addressed to each of said parties at his last known place of business or residence, as follows:

Steve Ruljanovich, 642 W. 14th St., San Pedro

David A. Fall, 388 W. 7th St., San Pedro

Peter Cekalovich, Dominic Mratinich, Frank Muljat,
642 W. 14th St., San Pedro

(Respondents and Claimants' Exhibit No. E.)

Occidental Indemnity Co., 548 So. Spring, LA

J. L. Kearney, 726 Standard Oil Bldg., LA

SF

Signature

EMMA S. HUNT

Dated at Los Angeles California

Apr 7 - 1943

[Stamped]: Date: No. E in evidence.

[Endorsed]: No. 10705. United States Circuit Court of Appeals for the Ninth Circuit. Peter Cekalovich, Dominic Mratinich and Frank Muljat, owners of the Diesel Screw "Betsy Ross," Appellants, vs. Steve Ruljanovich, Appellee. Steve Ruljanovich, Appellant, vs. Peter Cekalovich, Dominic Mratinich and Frank Muljat, owners of the Diesel Screw "Betsy Ross," Appellees. Apostles on Appeal upon Appeals from the District Court of the United States for the Southern District of California, Central Division.

Filed March 10, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals for the
Ninth Circuit.

Diesel Screw "Betsy Ross," her *tackel*, etc. and Peter
Cekalovich, Master of said vessel, and Peter Ceka-
lovich, Dominic Mratinich and Frank Muljat, her
owners, Appellants, vs. Steve Ruljanovich, Appellee.

Case No. 10705.

STATEMENT OF POINTS ON WHICH APPEL-
LANTS INTEND TO RELY ON APPEAL
AND DESIGNATION OF PARTS OF
RECORD NECESSARY FOR THE CONSID-
ERATION THEREOF.

Appellants hereby adopt the Assignments of Error
filed in the United States District Court as the State-
ment of Points relied upon in this appeal.

Appellants hereby request that the entire record filed
in this court be printed.

Dated: March 21st, 1944.

HENRY E. KAPPLER

Proctor for Appellants.

(AFFIDAVIT OF SERVICE BY MAIL—1013a,
C. C. P.)

State of California, County of Los Angeles—ss.

Frances Cooper, being first duly sworn says: That
affiant is a citizen of the United States and a resident
of the County of Los Angeles; that affiant is over the

age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 639 South Spring St., Los Angeles 14, California, that on the 21st day of March, 1944, affiant served the within Statement of Points on Which Appellants Intend to Rely on Appeal, etc., on the appellee in said action, by placing a true copy thereof in an envelope addressed to the proctor of record for said appellee at the office address of said proctor, as follows: "David A. Fall, Esq., 388 West 7th St., San Pedro, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the proctor for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

FRANCES COOPER

Subscribed and sworn to before me this 21st day of March, 1944.

(Seal)

ENES SARVELLO,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed Mar. 23, 1944. Paul P. O'Brien,
Clerk.